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Monday 4 April 2005

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Lundi 4 avril 2005

Standing committee on social policy

Accessibility for Ontarians with
Disabilities Act, 2005

Comité permanent de la politique sociale

Loi de 2005 sur l'accessibilité
pour les personnes handicapées
de l'Ontario



Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
Greffière : Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 4 April 2005

Lundi 4 avril 2005

*The committee met at 1556 in room 151.*ACCESSIBILITY FOR ONTARIANS WITH
DISABILITIES ACT, 2005LOI DE 2005 SUR L'ACCESSIBILITÉ
POUR LES PERSONNES HANDICAPÉES
DE L'ONTARIO

Consideration of Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities / Projet de loi 118, Loi traitant de l'élaboration, de la mise en oeuvre et de l'application de normes concernant l'accessibilité pour les personnes handicapées en ce qui concerne les biens, les services, les installations, l'emploi, le logement, les bâtiments et toutes les autres choses qu'elle précise.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome to the meeting of the standing committee on social policy considering Bill 118, the Accessibility for Ontarians with Disabilities Act.

Before we start, I would like once again to point out several features that, we hope, help to improve accessibility for those who are attending and participating in meetings regarding Bill 118. In addition to our French-language interpretation, we are providing at each of our meetings closed captioning, sign-language interpreters and two support services attendants available to provide assistance to anyone who wishes it. They're always at the back of the room. Please identify yourselves for the audience. Thank you. It's nice to see both of you again.

The meeting today will be broadcast on the parliamentary channel, available on cable TV tomorrow at 10 a.m. and will be rebroadcast on Friday, April 8. Also, the Webcast of this meeting will be available tomorrow on the Legislative Assembly Web site, www.ontla.on.ca, at the same time as the television broadcast.

We will now resume our clause-by-clause consideration of Bill 118. At the last meeting, we left off during debate of Mr. Jackson's motion on subsections 6(5.1) and (5.2) on page 17 of our package.

Since Mr. Jackson is not here, I will ask for unanimous consent to defer this item until Mr. Jackson is in attendance. Do I have unanimous approval? Thank you.

We'll move to page 18. Mr. Ramal, please.

Mr. Khalil Ramal (London-Fanshawe): I move—

The Chair: Since we haven't started discussion, we'll go back to page 17. Mr. Jackson, if you're ready, since we left off with you, we want you to continue your debate on page 17, which is subsections 6(5.1) and (5.2). The floor is yours.

Mr. Cameron Jackson (Burlington): First of all, I apologize, Mr. Chairman.

I think I had commented; we were close to finishing the discussion. I only stressed the issue of interim standards because, in my view, there's nothing in this legislation that mandates someone outside of government to bring in these regulations; therefore, the government—and future governments—is completely and totally in the driver's seat.

It strikes me that, with the one codicil of making sure the disability community broadly and the ODA committee specifically have access to input, nothing in this legislation should tie the hands of the government, even to the extent of saying that in matters of its own domain, like within its own ministry, it should surrender a process of consultation in some certain matters to a three-, five- or a seven-year process when in fact the ministry and the government generally can make a leadership commitment.

The ODA committee supports this motion because they see evidence. We also know that the current accessibility council of Ontario, as it's currently constructed and constituted in Bill 125, had in fact begun the process of preparing regulations and a framework in order to recommend certain changes to the government. In some respects, this process in the current 118 takes longer than the process set out in Bill 125, and that's fine, except there's no mechanism for there to be any interim motions, and so interim standards that could flow currently from the process.

I strongly urge members to consider this as a friendly instrument that will assist the current government and future governments to accelerate the process of bringing in standards, guidelines, codes, or any of those matters as set out in the legislation. Thank you.

The Chair: Is there any further debate on this?

Ms. Kathleen O. Wynne (Don Valley West): Just to pick up where we were before, I will just briefly reiterate that the government is introducing an amendment under section 32 on page 84. It's an amendment to subsection 32(3) of the bill that would actually allow for preliminary

measures that would bridge the issue that Mr. Jackson is concerned about.

Mr. Jackson: I think I'd put on the record that the motion Ms. Wynne has brought to our attention addresses the issue of consulting with the disability community. It doesn't deal with the issue of the government bringing in interim measures sooner. I agree with her statement, except that it only applies to subsection (5.2) of this amendment and not to (5.1). If she'd like them separated so that she can support the regulation component and then be silent on (5.2) because it's captured elsewhere, then that would be helpful to the disability community.

The Chair: Any further debate?

I will now put the question. Shall the motion carry?

Mr. Rosario Marchese (Trinity-Spadina): Recorded vote.

The Chair: Can I ask again, do we want a recorded vote on every single section? Yes.

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We'll move on to number 18. Mr. Ramal, please.

Mr. Ramal: I move that the French version of subsection 6(6) of the bill be amended,

(a) by striking out "Les règlements pris en application du présent article peuvent créer" at the beginning and substituting "Une norme d'accessibilité peut créer"; and

(b) by striking out "ils peuvent créer" in the portion before clause (a) and substituting "elle peut créer."

It's some kind of technicality, I believe, to have the French translation match the English translation.

The Chair: Any debate on the motion?

Mr. Marchese: When the translation was first made, obviously we didn't capture the essence of what you were trying to do. So do you know, any of you, what the difference is between "Les règlements pris en application du présent article" versus "Une norme d'accessibilité"? Do you know the difference or what the implication of either of those two interpretations means?

Ms. Sibylle Filion: I can perhaps speak to that. The accessibility standards are regulations, so in fact, as a substantive matter, whether we say "the regulations" or "the accessibility standards," it amounts to the same thing. However, we wanted to be consistent with the English terminology. There had been some inconsistency when originally translated, so we're just trying to make it so that wherever we refer in English to an "accessibility standard," the equivalent term in French, "norme d'accessibilité," is used.

Mr. Marchese: Thank you.

The Chair: Any further debate? I will now put the question.

Ayes

Fonseca, Gravelle, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: The motion carries with full support.

Next is page 19. Mr. Ramal.

Mr. Ramal: I move that the French version of subsection 6(7) of the bill be amended by striking out "Les règlements pris en application du présent article peuvent définir" at the beginning and substituting "Une norme d'accessibilité peut définir."

It's the same as what happened in the first one, just to match the translation from English to French.

The Chair: Any questions or debate? If there are none, I will put the question.

Ayes

Fonseca, Gravelle, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: The motion carries with full support.

Mr. Ramal, number 20, please.

Mr. Ramal: I move that the French version of subsection 6(8) of the bill be struck out and the following substituted:

"Portée

"(8) Une norme d'accessibilité peut avoir une portée générale ou particulière et être limitée quant au temps et au lieu."

The Chair: Any debate on this? If there is no debate, I will put the question.

Ayes

Fonseca, Gravelle, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: Carried with full support.

Shall section 6, as amended, carry?

Ayes

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: Anyone against? None.

The next section is section 7, page 21. Mr. Marchese, please.

Mr. Marchese: I move that section 7 of the bill be struck out and the following substituted:

"Minister's responsibilities

"7. The minister is responsible for,

"(a) establishing and overseeing a process to develop and implement all accessibility standards necessary to achieving the purposes of this act; and

"(b) conducting educational programs and promoting public awareness on the accessibility standards and on

the work and progress of the standards development committees.”

I think it's obvious what we're trying to do: to expand the responsibilities of the minister. It's important that the minister's role be expanded beyond ensuring compliance to include a legislative responsibility to educate.

You will recall that many deputants who came in front of our committee spoke to the need for governments to lead or, if not lead, to at least take an active part in educating the public about issues pertaining to this bill. The majority of people sometimes are not as sensitive to these issues as they should be. Their knowledge of these issues is sometimes very limited, and sometimes a stereotype prevails and discrimination is more at work in terms of what they think about issues of disability. So we would impose a duty on government to educate the public.

1610

I'm not the only one who's speaking to this, but many, many deputants spoke to this. I don't think this would take away one iota from what the government is trying to do; in fact, it would help the government. Often we speak about the need to do so but leave the education portion out of the bill and hope that the government will do some educational program of some kind. The reality is, governments do very little by way of educating the public vis-à-vis a particular bill. It just never happens. So if some of you are going to argue that you're going to do that, or it's part of what you do, it just doesn't happen very often.

This addition would make sure that governments in fact do it.

Mr. Jeff Leal (Peterborough): If I could just ask a quick question of the acting assistant deputy minister: As I understand it, under section 32 of the Accessibility Directorate of Ontario, that looks after the broad-based education in the province of Ontario.

I have sympathy for Mr. Marchese's motion here, but I just don't want to duplicate things that are already in place. It's my experience, as a former municipal politician, that the accessibility directorate often provided that educational thrust for municipal councils or disabled people in municipalities across the province. Could I just have you comment on that?

Ms. Katherine Hewson: Certainly. You're quite correct: Section 32 does provide for the Accessibility Directorate of Ontario to conduct programs of public education. I would also point out that, at the beginning of that subsection, it does specify that that is at the direction of the minister.

Mr. Jackson: Could I ask, Ms. Hewson: You've not been able to get any handle on budget. How much have you dedicated for this purpose within your ministry?

Ms. Hewson: I would have to provide an answer to you subsequently. I don't have that information on hand.

The Chair: Mr. Marchese, you're next.

Mr. Marchese: Deputy—

Ms. Hewson: Acting assistant deputy minister.

Mr. Marchese: The acting assistant deputy minister made it very clear that at the beginning of section 32(3) it

says, “At the direction of the minister....” That means that when the minister says, “You shall conduct research and you shall educate,” or “You shall conduct programs of public education,” then it will happen. But it's “at the direction of.” He or she may not give that direction. It may or may not happen. It may happen at some time in the future, or it may not.

Section 7 says, “The minister is responsible for....” It's very clear.

Mr. Leal, what you're assuming, I'm assuming by this, is that you have high hopes, which I perhaps don't have, that your minister or some other minister in the current government or in the future may or may not do this. All I'm saying to you is that this language guarantees that the minister has responsibility for this and has to do it. The other one is, “At the direction of ... the directorate shall....” I think the distinction is very, very clear.

Mr. Leal: Mr. Marchese, perhaps my experience is different from that of others as a former municipal politician. We had a lady in Peterborough, Lois Hart Maxwell, who was in the vanguard for educating people in Ontario—

Mr. Jackson: How is Lois?

Mr. Leal: Very well. She sent me an e-mail today, Cam.

As Mr. Jackson knows, she was in the vanguard of educating people in Ontario, as a former municipal councillor in Peterborough, and then taking on the chair of the council for disabled persons and accessing education materials and thoughts from the Accessibility Directorate of Ontario. I can just reflect on what my experience has been in providing that information to the community of Peterborough over many, many years.

Other people may have different experiences than I have. I look at yours and I have some sympathy for it, but it seems to me it's perhaps a duplication of what's going on already, based on my background and experience.

The Chair: Can I go back? The question was asked by Mr. Jackson, I believe, and then I'll go to Mr. Marchese.

Mr. Jackson: I just want to put on the record that I think this motion is perfectly in order and worthy of our support. The Ontarians with Disabilities Act committee has made it very clear that this is an essential component and they have requested that this be entrenched. I think it's a reasonable request and I find it hard to believe—I'm looking at the motion that my colleague is going to present in a moment, which talks about holding additional consultations, and I suspect that, really, providing this better access is the ongoing responsibility of this legislation.

This isn't a slam dunk. It doesn't say that within three years the following items will be fixed. This is a long, 20-year process, and we need to ensure that the disability community is kept apprised of these changes. We attempted to do that in the previous bill by having a five-year review, so that forced public consultation and forced the process of education and public awareness. That was built into the design feature.

I would hope that the government will support my amendment that calls for that. If it doesn't, then clearly this is an excellent amendment that should be considered because it compels the government to keep the disability community fully in the loop and to begin educating the public on the importance of making Ontario barrier-free, even though "barrier-free" is not referenced in the legislation.

Mr. Marchese: I don't think this motion is very complicated. I don't mean to diminish your experience as a municipal councillor; that's not the point. I think that after 15 years of provincial experience we have a good sense of what goes on around here. We do little public education. And there isn't a dollar figure here. It doesn't even say how much you'd be spending. It says you should do something. Then, whether you do a little something—we can criticize you for not doing enough, but at least you would be doing something. In this case, if you just leave it to the section you referred me to, it may or may not happen.

This addition says, "(b) conducting educational programs and promoting public awareness on the accessibility standards"—it's very specific—"and on the work and progress of the standards development committees." That would almost ensure that on a regular basis we know what they're doing and that on a regular basis they report on what's happening as a way of ensuring that people actually know what's going on.

This is not a bad thing; it's a good thing for your bill. If you're proud of your bill, you would want to do this. I can't see why you might want to oppose this section. I just don't. Maybe you want to confer with some of the others who give you advice, I don't know, but it's really not a bad addition here.

The Chair: Mr. Ramal or Ms. Wynne?

Mr. Ramal: I agree with you, Mr. Marchese, that it's very important to educate the public in terms of creating awareness about accessibility, about the bill and what's involved in it. But as has been mentioned by the acting assistant deputy minister about it being duplicated, about it being talked about further when we go to section 32, there's no need to start adding and duplicating and confusing the whole issue. That's it. I have nothing to add.

The Chair: Ms. Wynne, and then I'll come back to you, Mr. Marchese.

1620

Ms. Wynne: I just want to add to what my colleagues have said. Section 32 lays out basically the work of the directorate at the direction of the minister. Again, I'm going to ask Mr. Marchese to look forward at an amendment to that section because we're basically saying that the function he is looking for is going to be in the hands of the directorate, at the direction of the minister. We're being much more explicit.

If you look again, at page 84 in the amendments we're saying that part of the work of the directorate—yes, at the direction of the minister—is going to be "to consult with organizations, including schools, colleges, universities, trade or occupational associations and self-governing

professions, on the provision of information and training respecting accessibility within such organizations."

Then we go on: to "inform"—

The Chair: Excuse me. If I could remind you to slow down.

Ms. Wynne: Yes; I'm sorry. I apologize.

Then the second clause, (e.2): "inform persons and organizations" of the accessibility standards.

So that amendment makes the section much more explicit and actually lays out the level of specificity that you're looking for, albeit in the hands of the directorate.

Mr. Marchese: The problem is, if the minister doesn't say to the directorate, "I want you to do this research," that part won't happen. So the directorate will not give you advice on that. Unless the minister says, "Give me advice on that," it won't do that. What you're saying is that it's there and it will happen. All I'm saying is that if the minister says, "We don't have money for this," the minister will simply indicate to the directorate, "At this point, I don't want you to do that."

My amendment says it is a responsibility of the minister to do that. It's very different, and it's very clear, isn't it?

The Chair: I hear you.

Mr. Marchese: I hear myself too.

The Chair: Any further debate on the motion? If there is none, then I will put the question.

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Therefore, the next is: Shall section 7 carry, without any amendment? I'll put the question for a recorded vote.

Ayes

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: Section 7 carries.

The next section is section 8, page 22.

Mr. Marchese: I move that subsection 8(2) be amended by striking out "and" at the end of clause (a), adding "and" at the end of clause (b) and adding the following clause:

"(c) determining the need for public consultations and holding such consultations while developing the proposed accessibility standards specified under clause (a)."

The subsection at the moment reads:

"(2) Each standards development committee is responsible for,

"(a) developing proposed accessibility standards for such industries, sectors of the economy or classes of persons or organizations as the minister may specify; and

“(b) further defining the persons or organizations that are part of the industry, sector of the economy or class specified by the minister under clause (a).”

I'm adding:

“(c) determining the need for public consultations and holding such consultations while developing the proposed accessibility standards specified under clause (a).”

Again, I think we would want the standards development committee to have this power to determine the need for public consultation. It is something that Liberal members agreed to when they were in opposition, while debating Bill 125. I think the argument should continue today.

Some of you might argue that this is a totally different bill and therefore they don't need to have this ability. I don't know how that argument could hold up, but it seems to me like a straightforward addition that would give the power to the standards committee to be able to have public meetings, public consultations, so they're not private, so that more and more people know about what these standards committees are doing.

It would say to the public that you have their confidence, that you want to be able to reach out to the public in an open way. It would say that we want to help to inform the public and, to the extent possible, educate the public. If you have consultations, that's what you're doing: You're informing, educating and sometimes, God forbid, politicizing people. You are providing transparency and accountability while you do that, and that's good for the committee and good for the public.

Here is another addition that I recommend to you. I put it to you that it's good for you, good for the public, good for the committee and good for people with disabilities, and I'm waiting anxiously to hear arguments against it.

The Chair: Any debate?

Mr. Ramal: In the text of the bill, we talk about the public input that will be taken into consideration and also that the minutes of the committee will be public too. I believe an additional layer of public consultation will delay development of accessibility standards. To move forward without duplication is what we are trying to do. As I mentioned, the standards will be open for the public to put their input, and also the minutes from the committee will be available to all the people in this province. So there's no need to duplicate again.

Mr. Marchese: Again, the arguments are so feeble that it's hard to resist a response. First of all, this doesn't add an additional layer. It allows the standards committee to determine the need for public consultations. It may or may not have them, but it may decide to do so. It's not another layer.

Secondly, making the minutes available is not participation. The fact that the chair can make the minutes of this meeting available doesn't allow these people to participate. What you're saying is, “The people we've nominated are going to do the right thing on your behalf, and here are the minutes. Don't worry. You don't have to

come. We don't need to hear from you,” in the event that a consultation is needed.

The standards committee would be given the power to determine the need for public consultations, and that's all it does. It's not an additional layer, and the minutes are simply not enough.

Ms. Wynne: As far as I understand, there's nothing precluding the holding of public consultations, and the way the standards development committees are being set up, the idea is that they will represent the best interests of the disability community and the public at the table. The concern being the delay, I'm not going to support the amendment because my understanding, as I said, is that there's nothing precluding public consultation.

Mr. Jackson: First of all, I support it because I consider that there are a couple of issues that really will require a significant amount of input. I'm not just thinking from the disabilities community; I'm talking about the broader community who will be impacted financially. Both groups of Ontarians have an interest. I think it would be erroneous to suggest that the absence of it in legislation means that they could do it at any time. Frankly, it is quite the opposite, in legal terms. Unless it's clearly identified in the legislation—these committees are going to spend enormous amounts of public money, and in the absence of having it in the legislation, it would, in and of itself, preclude that process.

I realize that this is an expensive process, and if that is what's causing the government's desire to cancel this option in the legislation, then they should say that. We know it isn't inexpensive to conduct public hearings in these matters in order to ensure accessibility; however, isn't that the principle that we're trying to establish in this bill? It does not ensure that there will be any opportunity for that. In fact, there are budget considerations to conducting further public hearings, and unless it's clearly set out as an option—I think my colleague has put this more than appropriately, that this is an option for the standards committee to come forward and say to the minister, “We would really like to do this.” The bureaucrats would be the first to tell you that in the absence of this motion, you can ask for anything, but the government is under no obligation, and neither is the civil service required to budget for this eventuality, because it's not referenced in the legislation. So that's my 20 years of experience, and it's clear that this isn't going to happen.

1630

I don't want to take up time by giving example after example of issues which are so sensitive, in terms of the cost and in terms of the desire of the disability community to be treated with equality, that there will be required additional public input. I remind everybody that this legislation that's before us has a proviso that you can drive a truck through saying that the government reserves the right to create exemptions for classes of people, organizations and businesses. When you have that clause there and that protection for people who don't want to make Ontario barrier-free, then I think we should be

providing opportunities for public input to ensure that we do get the very best regulations and standards and codes built into the province's changes in legislation which will inevitably be required for some of these issues.

The Chair: Mr. Fonseca. Rosario, can I let him make some comments and then come back to you?

Mr. Marchese: Yes. I beg your pardon.

Mr. Peter Fonseca (Mississauga East): We ought to get these standards in place sooner rather than later. As Mr. Jackson has mentioned—and Mr. Jackson often refers to the cost of things—this may actually delay for people with disabilities, where we may have many businesses and many others coming forward that would look at this as a delay to getting these standards in place, and having more and more consultation that would take up months, if not years, holding us from moving forward on something that we need to move forward on as quickly as possible.

Mr. Marchese: Here's the problem with that argument. What you're saying is, you don't trust the standards development committee to do the right thing. If you say, "We don't need more and more consultations," it suggests that the committee would do just that as a way of almost impeding, preventing, blocking, deliberately having consultation meetings so as not to move the issue on. I don't think they would do that. I don't think they would be appointed for the purposes of purposely obstructing the government by having more and more meetings. What you're saying to that standards development committee—you haven't appointed them, but what you're saying, theoretically, to that group is that you don't trust them.

This motion is very prescriptive. It says,

"Each standards development committee is responsible for,

"(a) developing proposed accessibility standards....

"(b) further defining the persons or organizations that are part of the industry," and so on.

It's very clear. It doesn't allow for flexibility for them, in the event that they need to have a meeting of sorts, to do so. If not included, it is indeed precluded. Again, I'm puzzled as to your interest in opposing this very simple motion that would give this committee the power to determine if they need a meeting for public consultations. I'm puzzled by it—not surprised, but still puzzled.

The Chair: Is there any further debate? If there's none, I'll put the question.

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one, Mr. Jackson, pages 23 and 23b.

Mr. Jackson: I move that subsections 8(3), (4), and (5) of the bill be struck out and the following substituted:

"Key sector committees

"(3) Within six months of the day this section comes into force, the minister shall establish standards development committees for such industries, sectors of the economy or classes of persons and organizations as the minister determines should be given priority based on the needs of persons with disabilities, including the following industries and sectors of the economy:

"1. Transportation.

"2. Education.

"3. Health care.

"4. The construction industry.

"5. Employment sector.

"6. Retail sector.

"7. Customer services for persons with disabilities.

"Other committees

"(4) In addition to establishing standards development committees that are charged with the responsibility of developing proposed accessibility standards for specified industries, sectors of the economy or classes or persons or organizations, the minister may establish standards development committees to develop proposed accessibility standards to address a barrier or a class of barriers that may exist in more than one industry or sector of the economy or may apply to more than one class of persons or organizations.

"Notice of committee to be established

"(5) The minister shall publish a notice announcing the establishment of a standards development committee in a newspaper of general circulation in the province and shall post the notice on a government Internet site.

"Content of notice

"(5.1) The notice referred to in subsection (5) shall,

"(a) explain the function of the standards development committee and identify the industry, sector of the economy or class or person or organization or barrier for which the committee is to develop accessibility standards;

"(b) state the number of members that are to be appointed to the committee;

"(c) identify the qualifications that a person must have to become a committee member;

"(d) invite interested persons to apply to the minister to become a committee member; and

"(e) set the date by which applications must be received by the minister in accordance with subsection (5.2).

"Timing of application

"(5.2) All applications to become a member of a standards development committee shall be submitted to the minister on the earlier of,

"(a) the day specified by the minister in the notice referred to in subsection (5); or

"(b) the day that is 21 days after the day the notice is first published in a newspaper of general circulation in the province.

"Publication of applicants' names

“(5.3) Within three days of the last day for submission of applications to become a member of a standards development committee, the minister shall,

“(a) publish the names of all applicants received in accordance with subsection (5.1) in a newspaper of general circulation in the province and post the list of names on a government Internet site;

“(b) invite members of the public to comment on the qualifications of applicants for appointment to the committee within 15 days after the day the list of applicants is first published and posted in accordance with clause (a).

“Selection of committee members

“(5.4) Within 15 days after the last day of the period for public comment referred to in clause (5.3)(b), the minister, having considered the comments received, shall select the members of the committee and provide each applicant with the decision to grant or refuse the application and the reasons therefor.

“Publication of appointment

“(5.5) The minister shall publish the names of the appointees to a standards development committee in a newspaper of general circulation in the province and shall post the list of names on a government Internet site.

“Term of appointment

“(5.6) The members of a standards development committee shall be appointed for a period of five years.”

The Chair: Any debate?

Mr. Ramal: We're not going to support this motion, for many reasons. First, specifying the number of standards development committees would take away the flexibility needed for smooth implementation. Also, you mention here many sectors—employment and customer service—which, by any definition, wouldn't be considered as sectors.

Second, trying to set out a priority would discourage many non-priority sectors from moving forward as soon as possible to implement whatever is necessary to make themselves accessible.

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Third, we believe that Bill 118 rates an inclusive model for the standards development required by each economic sector to assess, themselves, when they'll be ready to implement that bill. Also, the government will work in conjunction with the disabled community in order to define the sectors and develop the sector accessibility standards in order to reach the goal set by Bill 118.

Mr. Marchese: I support this motion. Again, it seems to me very reasonable. I don't know how it takes away from flexibility; the government would have to do whatever.

In terms of the key sector committees, these are the committees that I think people in the field have identified as areas they should be moving on as quickly as possible. That's why they're listed as such. This isn't a list that we've invented or that Mr. Jackson has invented; it has come before us on the basis of the experience of people with disabilities. They have a lot of experience, more than I do, so I think that's a very good suggestion.

“Other committees

“(4) In addition to establishing standards development committees that are charged with the responsibility of developing proposed accessibility standards for specified industries ... the minister may establish standards development committees to develop proposed accessibility standards to address a barrier or a class of barriers ” gives the minister flexibility that I don't think is currently in the bill, unless proven otherwise. So this is a useful suggestion. I'm not quite clear on the thinking of the government on this side.

“Notice of committee to be established

“(5) The minister shall publish a notice announcing the establishment of a standards development committee in a newspaper ... and shall post the notice on a government Internet site.” Practical, so that people know. I don't know why we would be opposed to that.

“Content of notice” specifies and has the effect of informing, educating people on what is going on. So it's practical and useful.

I support the next one as well, “Publication of applicants' names.” It's very useful.

“(5.3) Within three days of the last day for submission of applications to become a member of a standards development committee, the minister shall,

“(a) publish the names of all applicants received ... in a newspaper of general circulation ... on a government Internet site,” I think is useful; not complicated.

“(b) invite members of the public to comment on the qualifications of applicants for appointment,” I think is useful. Some people may be intimidated by this, but I think those who get appointed, if they're to have the confidence of the public, would be happy to have the minister receive some feedback as to the appropriateness of their application. So what this says is that the public has confidence in the people you've nominated or will select. I think that's a very useful addition.

“Term of appointment

“(5.6) The members of a standards development committee shall be appointed for a period of five years.” I think the government has a motion to that effect too; I don't remember. That is useful because it adds stability and continuity.

This whole motion is a very reasonable one. I'm supporting it.

Mr. Jackson: I'm rather disappointed to see the parliamentary assistant read from some notes about why he's objecting to this. I thought the purpose of this was to have some input from the public, in particular the disability community. I'd like to take credit for this motion. I got this from the ODA committee. Their primary concern is right in the very first sentence: “Within six months of the day this section comes into force.” We have heard, the bureaucrats have told us, that there could be anywhere from 17 to 20 of these standards committees, and surely the disability community has said to this government, “Here's where we think you should begin.” This is the list that they gave me, and Mr. Marchese has a motion that's almost identical, dealing with this first section—he has five, and that's fine; they're both

sound—the point being, of course, that there's very real concern that we're not going to get down to the important issues. We've heard from the minister. On this list, she has identified transportation. It's the only one that's on the minister's list. That's not the only one on the disability list.

Mr. Ramal: Just a question to clarify. The employment sector and customer services have never been considered by any definitions as sectors, so that's what the confusion is.

Mr. Jackson: If you wanted to remove "Customer services for persons with disabilities," I doubt seriously that's going to win your favour for the rest of the motion. But we consider that a sector in terms of achieving what the ODA committee has asked us for. Without getting into a debate over what the various sectors are, the priorities are established: transportation, education, health care, the construction industry, the employment sector. Mr. Marchese has identified customer services as well.

The reason that retail and customer services were put in there is because they are quite achievable in a very short time frame, whereas transportation has significant financial implications to the province. So it's important that we have some early identified successes for the standards committee.

I thought the request was reasonable. We are eliminating a piece of legislation that identified that all government ministries must have standards developed and so on and so forth. We've removed that, so we are now dealing with the province as a whole, yet we do not have anywhere in the legislation the beginning time frame and specific sectors that we feel are a priority. If that isn't fundamental to the exercise of helping us to identify—and we heard significantly that transportation is considered a number one priority because too many disabled persons are being stranded, and they miss their ride and it limits all their access points.

ODAC has identified the issue of wanting to know. As minister, I think I appointed the first five representatives to the Ontarians with Disabilities Act committee. I purposely didn't appoint any more than that because I felt that we needed input from the rest of the province. I knew that the first five were outstanding individuals and they were not controversial. In fact, the first chairman I appointed was Lyn McLeod's riding president. I didn't think I could be any more open-minded than that, to pick Dave Shannon. Dave was an extraordinary individual—so good that the federal government grabbed him as soon as we identified him.

I'm not identifying what we're going to compensate these people with. I understand that the government is considering a much, much cheaper model than the one that was contained in Bill 125. That's fine. With the size of the number of standards committees, perhaps that's part of the planning. But ODAC made it abundantly clear they want a process that'll allow many people an opportunity to apply. To those of us who went around the province to the various communities, it was perhaps one of the most consistent questions that was raised: "How do I

apply? How can I make sure that my application is read and that I have a chance at serving?" That's a valid question and one that requires the kind of commitment that we're setting out here in the legislation.

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Again, the timing: This is one of the most under-resourced secretariats, given the size and the enormity of the responsibility we're about to put on them. We have no statement or commitment from the government in terms of resourcing this committee; therefore, to protect the integrity of this legislation, we need firmer timelines, because they become a mandate for that ministry. Therefore, they have to report to their minister and say, "Minister, you can cut your little program here, you can cut over here, but you can't cut here in the secretariat because we have the mandate which is clearly set out in legislation." In the absence of those timelines, you take the pressure off the outcome-based requirement for the minister to get resourced properly. That was the whole principle behind forcing every ministry to put it on their Web site, because it forced them to be held accountable if they decided to steal the money and put it somewhere else instead of toward the disability community, and there's already evidence on the Web site that that's occurring. These are the kinds of protections that are built into legislation, and ODAC knows that. They know that from past experience and because they have people who are legislative draftspersons.

The purpose of this is to say, "Look, we want to get on with the business of identifying the key elements of reform required." To put it another way, we heard long and hard, "We don't want health care done in the 20th year. We don't want education done in the 20th year. We want it started now." This essentially disciplines this legislation and says, "In order to proceed and go further, the purpose of the consultation was to get that input. We've now received that input and we're putting it into the language of this legislation." Persons with disabilities all across Ontario will feel they've had a more direct hand in this legislation because those are the committees that will be developing standards first and foremost in our province.

Ms. Wynne: Very briefly, the level of specificity in this motion will be in the terms of reference of these committees. It's not that we're saying these things shouldn't be specified, but we're not going to pre-empt the process that the ministry will put in place in terms of establishing the terms of reference and laying out the process for choosing the sectors in consultation with the disability community and the sectoral readiness. So it will all be there. It's just not going to be in the legislation; it'll be in the terms of reference.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one is Mr. Marchese's, page 24.

Mr. Marchese: I move that subsection 8(4) of the bill be amended by striking out "The minister shall invite the following persons or entities to participate as members of a standards development committee" and substituting "The minister shall establish qualifications for membership in a standards development committee and make those qualifications available to the public in the prescribed manner and shall publicly solicit applications from among the following persons:"

It's quite different in terms of what we're proposing. It says that rather than the minister saying, "We shall invite the following persons to participate," we say, "The minister shall establish qualifications for membership." That means that we're indicating to the public and to people with disabilities that we should be establishing—

The Chair: Just a moment, please. You are on page 24, aren't you?

Mr. Marchese: I will be now.

The Chair: Would you mind starting from—

Mr. Marchese: Given that this amendment has already been defeated, I will withdraw it.

The Chair: Page 24 has been withdrawn. Mr. Marchese, you are now on 25.

Mr. Marchese: Should I reread my—are we OK?

The Chair: There's no need. You just finished reading it. It's on the record already. Go ahead with your comments.

Mr. Marchese: I couldn't quite understand why people were saying, "Hmm, are we on the right page?"

Rather than the minister simply inviting people to participate, we're saying that "The minister shall establish qualifications for membership ... and make those qualifications available to the public."

Again, I argue that you would be saying to the public that it's not just a matter of the minister inviting anybody he or she thinks should be on that committee; rather, we want to let the public and people with disabilities know that certain qualifications are required for the job. Then we want to be able to post that and "publicly solicit applications from among the following persons."

It's different from what we have at the moment. It gives greater public confidence in what the minister is doing, rather than simply assuming that the minister will do the right thing and appoint the right people. If we establish qualifications, we will feel better and people with disabilities will feel better about that.

Mr. Fonseca: The minister will consult with stakeholders prior to establishing those standards development committees, to ensure that there is adequate and fair representation on all those committees. Also, as Ms. Wynne said, the qualifications for standards development committee members would be spelled out in the terms of

reference and they would be tailored to each standards development committee as we move forward.

Mr. Jackson: I'm perplexed. We've asked if there's been any work done in this area and we've been told there has been no work done on it. The essence of this is that this has to be done within six months. Your first contribution to this was to say, "Wouldn't that be interpreted as a delay?" We're just doing what the ODAC has asked us to do, which is to put a time parameter around this and get going with it.

Mr. Marchese: Mr. Jackson, we're on page 25. Sorry.

The Chair: It's subsection 8(4).

Mr. Jackson: All right, but does this have a time frame?

Mr. Marchese: No.

Mr. Jackson: Exactly.

Mr. Marchese: No, it's 8(4).

Mr. Jackson: I know, but it doesn't speak to the issue of time, and we still do not have the regs. You're free to ask, but there is none developed. No work has been done in this area. And we've asked. We asked at the beginning of the process.

The consultation on this legislation started a year ago. Here we are at this point, and we're no further ahead to knowing exactly what the framework's going to be. That's all well and good, but you're going to be up on the floor of the Legislature, not able to ask a direct question to the minister—she or he, whoever the minister's going to be after the shuffle—about where are the time frames, where are the individuals being appointed, and under what terms of reference.

This is all very strange, because these are matters that shouldn't, under normal government procedure, go forward unless those questions have been answered. Cabinet shouldn't be proceeding with the first draft of this legislation without knowing exactly how the framework would work. The fact that you don't wish to share it with us, I can perhaps understand. What I can't understand is that you've got bureaucrats saying, "We haven't done any work on this thing yet." That causes me great concern. It goes back to the point I raised earlier: This ministry is not being adequately resourced. It is spending less today than it spent the year we opened it. That's wrong in such an important piece of legislation that's getting ramped up. Those are just the facts.

Anyway, you have my support.

Ms. Wynne: I guess I'm just trying to extract the real question from the disingenuousness. My understanding of the way this place works is that legislation gets passed and regulations get written. The regulations and terms of reference that spell out how an act is going to be implemented would not be public and would not be available before the legislation had passed. My understanding is that in the natural order of things, the legislation needs to get passed and then the regulations and the terms of reference will be put in place.

I think we're on track to do that. We'd like to see this legislation go through as quickly as possible so we could get going on getting these committees set up.

1700

Mr. Marchese: I was trying to see where the argument was made about how my amendment is interpreted as being disingenuous. I just don't get it.

Ms. Wynne: No, sorry. I was referring to Mr. Jackson. I apologize, Mr. Marchese.

Mr. Marchese: Thank you.

I understand that you say, Mr. Fonseca, that the minister plans to consult. I suspect the minister would probably do that. I'm not bothered by that, but my motion doesn't speak to that. My motion says, "The minister shall establish qualifications." You post that and you make it available in public. I have no doubt that if you do what I'm recommending, the minister will still consult with stakeholders as to who should be appointed. They are two different things. By saying that you establish qualifications, you're saying, "Here are the criteria." That's all we're saying. It doesn't complicate this in any way.

You also add that the qualifications would be established somehow in the terms of reference. I'm not sure that's the case. I don't think there is any line in this bill that would do that, nor in anything that might be done by regulation that would spell out the qualifications necessarily. I don't know that. You say it might be, but I don't know that that's the case. Why would you object to this? That's what I'm trying to understand.

Mr. Fonseca: Mr. Marchese, I was just letting you know that, yes, those qualifications and standards will be spelled out in the terms of reference. This will be a transparent and accountable process that we will be bringing forward. It will be open so everybody can see. Those terms of reference will be there as those committees are set.

Mr. Marchese: OK, Peter. People appreciate what you said and they'll hold you accountable to that, I guess.

Mr. Jackson: I just wanted to put on the record that it's not uncommon—it does occur—that regs have been known to be tabled at the same time as legislation. That's not totally uncommon. It's not commonplace, but it does happen.

Secondly, terms of reference are always either set out in legislation or the participants know in advance generally what the guidelines are. The fact that the government has done no work in this area or has been unwilling to share any of that with the disability community to date is a cause for concern.

I keep hearing the notion of "in the interest of time," but we've done no work in terms of identifying the terms of reference for the committees that will operate or the ratio of disabled persons to participate, the qualifications and so on. So the absence of this work causes me great concern.

I don't wish to get into a whole series of other issues—the appointment of committees—which the government is currently engaged in that are taking a lot longer than they should. This legislation has a unique life of its own. We just want to make sure that it gets started

quickly and the access community knows what's happening.

I don't think the minister needs to consult. I think she has heard loud and clear from the disability community who they would like to see participating. If she is going to add another layer to this, how long is it going to take for the government to get its standards committees up and running? That's the concern.

I will be supporting this amendment.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Page 26, Mr. Marchese.

Mr. Marchese: The opposition feels very lonely at times.

I move that subsection 8(4) of the bill be amended by adding the following paragraph:

"4. Representatives of trade unions and professional associations who represent employees employed in the industry or sector or the economy to which the accessibility standard is intended to apply or employed by the class of persons or organizations to which the accessibility standard is intended to apply."

It simply adds to the section that I was debating a moment ago, that "representatives of trade unions and professional associations who represent employees" be added. Trade unions represent 35% of the population in the province, if not more, and they play a key role in anything that we do in this society. This bill can only be enhanced by their involvement, not diminished by it.

Mr. Leal: Mr. Chairman, if we move ahead to the government motion 27, which is an amendment, it would provide, "Such other persons or organizations as the minister may consider advisable."

The minister recognizing the role and history that trade unions have in the province of Ontario, or other individuals or organizations that should be invited forward to participate, I'm comfortable that this amendment would cover those issues.

The Chair: Mr. Jackson and then Mr. Marchese.

Mr. Jackson: Very short. I support it because there's no guarantee that you will get those organizations so named. That includes OPSEU, CUPE or anyone else. I feel very strongly about the government fixing its own backyard before we go imposing it on the rest of the world. In this instance, this minister or future ministers can consider not putting that representation on. That's the way legislation is written. It isn't enabling, but he or she already has that power now.

One of the things being considered is changes to occupational health and safety and looking at the framework of that legislation and its impact on the disability community, because some disabled persons are actually at risk in the workplace as a result of that. That model specifically sets out representation for the protection of the individuals. There are no guarantees in this legislation we'll be affording similar kinds of protection and entitlement that in this province should be considered.

So I thank the member for his amendment and I will support it.

Mr. Marchese: I suggest to you, Mr. Leal, that your minister will not have trade unions there. I can almost guarantee it.

Mr. Jackson: Even though she's from Hamilton.

Mr. Marchese: In spite of it.

Mr. Leal: I disagree. Every minister, regardless of political stripe, knows the realities of Ontario and the people who make up Ontario, but maybe my view of the province is different than others'.

Mr. Marchese: You're probably right. You're probably thinking that the minister will invite trade unions. Is that your thinking?

Mr. Leal: I just go from my background and how you deal with people in society. You look at all the groups.

Mr. Marchese: Sure.

Mr. Leal: If you're bringing forward such a significant piece of legislation, as I believe Bill 118 is, I believe the minister of the day, regardless of what political stripe the government is, would certainly make sure, under our government amendment, that all groups are represented. That's why I can vote against yours and accept the government amendment—

Mr. Marchese: Ah, but here's the problemo, Mr. Leal. Your motion says that the minister shall invite any "other persons or organizations as the minister may consider advisable." Mine is very specific; yours is vague. Yours depends on whether the minister thinks it's good or bad, whether there's enough pressure from one group to be included or not. I appreciate what you're getting at, but my point is that I don't believe trade unions would be represented there. That's my feeling and I'm guaranteeing it in advance. Imagine that. I don't even know, right? But I can almost assure you they won't be there. That's why I feel that if we include them, they would be there at the table, and if we don't, they won't be—guaranteed.

1710

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Gravelle, page 27.

Mr. Michael Gravelle (Thunder Bay—Superior North): I move that subsection 8(4) of the bill be amended by adding the following paragraph:

"4. Such other persons or organizations as the minister may consider advisable."

The Chair: Any comments?

Mr. Jackson: I'm unfamiliar with using this phrase "advisable." Who, in your mind, would be advising the minister that these other groups would be appropriate? It's just an awkward way of wording it. Normally, we say "from time to time, the minister may choose." We say any number of things, but "advisable"? Who's advising her or him?

Mr. Ramal: That will be necessary to get the job done, and this motion will give the minister the flexibility to advise or to ask many sectors to be present in committee in order to advise her to get the job done.

Mr. Jackson: So she can reject it if it's advisable.

Mr. Ramal: When you talk about advice, it means you can take that advice or not. That's what "advisable" means. Anyway, she has the flexibility to choose whom-ever she thinks is willing to get the job done and who would be helpful for the standards committee. The motion would talk about this and give the minister—

Mr. Jackson: We just thought organized labour would be helpful to the standards committee—

Mr. Ramal: Possibly.

Mr. Jackson: —but they've just been eliminated.

Mr. Ramal: No, we're not eliminating anyone. It's open. It would be—

Mr. Jackson: Yes, but it says "may consider advisable." Shouldn't this specifically say that it's the accessibility standards council advising the minister?

I'm just trying to understand the logic of this. If you've set a standards committee, you can't ask the standards committee if it needs the input, because once you've completed that, you've got a full committee, so there's no room for them. So who would be advising the minister that certain other groups and organizations should be added?

We wouldn't want it to be after the fact, because we want to ensure that a majority of the individuals sitting on a standards committee are persons with disabilities. We want that entrenched in the legislation. So you don't want to be adding a group of business people after the fact that waters that down. That's why I'm a little concerned about who would be advising her.

Mr. Ramal: We go back to your motion. When we lay out the sectors, it means taking flexibility away from the minister in order to get advice from them. That's why this motion would give the minister the flexibility to choose whether a union or the private sector or the disabled community or whoever would be advisable for the minister. That's why we're not mentioning or capping who's to be the adviser or not to be the adviser. We left it open. If you want some kind of technical meaning for the

whole thing, we have the legal department here and we also have the policy adviser.

Mr. Jackson: Could someone respond to this issue of whether the minister's subsequent appointments might throw an imbalance on to any standards committee?

The Chair: Would staff be able to reply, please?

Ms. Hewson: I don't think that amendment by itself would create an imbalance, but that would all be dependent on the people the minister appoints to the standards development committee. I don't think that amendment would affect that, Mr. Jackson.

Mr. Jackson: If, after we set—we'll say the magic number for the transportation committee is 16. Then, at the 11th hour, after it's all been struck, it's been on the Web site and everybody's had an opportunity to have input, according to the regs we think are going to happen, all of a sudden, the minister says, "You know what? I really think these three other municipalities with the largest transportation systems should have somebody on the committee."

So where a majority of the standards committee must be persons with disability, now you've thrown that into—or are you telling me that there isn't an absolute requirement to have a majority of individuals who are disabled?

Ms. Hewson: Not on this committee.

Mr. Jackson: None of the standards committees?

Ms. Hewson: Not on the standards development committee.

Mr. Jackson: Why not? I thought that was what ODAC had asked for.

Ms. Hewson: The standards development committee needs to have members who are persons with disabilities or their representatives—representatives of the industry sectors, etc., and then their representative ministries, plus others.

Mr. Jackson: I accept that. I understand that, but there's nowhere in this legislation, or with amendments, to your knowledge, that confirms that a majority of the individuals must be persons with disabilities.

Ms. Hewson: No, that's on the standards advisory committee.

Mr. Jackson: Yes, the one council, but their responsibility to the council has been reduced rather substantially between the two legislations. They no longer draft regs and codes. That's a substantive change in this legislation, that the body that was responsible for drafting and recommending to the minister the codes and so on—standards and everything—had a majority of disabled persons on it. This is not now the case, you're telling me.

Ms. Hewson: There's nothing in the bill that requires the majority of people on a standards development committee to be persons with disabilities.

Mr. Jackson: I thought that was in these amendments. So if it's not, I would like counsel's advice as to which section would require that amendment, before we leave this section.

Mr. Ramal: We'll give the flexibility for the minister to move on and seek whatever number and whatever element would be represented in that committee. When

we start capping and demanding a percentage, we'll take away that flexibility. I guess we'll also create some kind of implication in order to smooth the implementation. So I would imagine the flexibility to be in good faith. That's what we've been working on from day one in order to establish and pass this bill.

The Chair: Can we recognize other people who want to speak on this topic? Mr. Leal, and then Ms. Wynne.

Mr. Leal: I have a question. I think it's Mr. Lillico, is it? At first blush, by putting "advisable" in the end—I may look at that as slightly awkward, but maybe you could help me to understand that.

Mr. David Lillico: I don't really see the ambiguity in it. If the minister considers it advisable, if the minister considers it to be a good idea, if the minister considers it to be appropriate—I'm not aware of any substantive distinctions between those terms, unless leg. counsel may want to comment; I don't know.

Mr. Leal: I appreciate the word "appropriate," because that's probably what I would use, but now that you've expanded that for me, that was the context that I was thinking of it in, "appropriate" maybe being a better word. Now that you've explained it to me, I can accept that.

Ms. Wynne: I just wanted to address the issue that I think I'm hearing from Mr. Jackson, where he's suggesting that somehow by adding number 4, which broadens the people who might be appointed to these committees, this gives the minister the opportunity to appoint more people than are laid out in the terms of reference, or at the 11th hour put on more people and create an imbalance.

As I read this, this is simply expanding the pool of people from which the minister can choose to request to serve on one of these committees. So it has nothing to do with the sequence of appointment; it has nothing to do with changing the balance on the committee; it's simply expanding the pool, which we heard in our hearings was what people wanted. They wanted the opportunity for unions and federations to be represented, and other organizations. That's why I think that this more inclusive amendment is more appropriate.

Mr. Marchese: I just wanted to say that I support the amendment, because in theory this could allow the minister to include trade unions, for example. That could very well end up supporting a motion they defeated. So I think it's not so bad.

The Chair: Any further discussion? Is there any further debate? If there isn't, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Gravelle, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: Full support. Thank you. The motion is carried with everybody's support.

The next one is page 28.

1720

Mr. Marchese: I move that section (8) of the bill be amended by adding the following subsection:

“Term of employment

“(4.1) The members of a standards development committee shall serve on the committee for a term of five years.”

I think this is straightforward. I believe that members should have the stability of knowing they are going to be there for a while, and five years is obviously in keeping with the time frames that your government has established. To be any less than that would be a problem. So I'm recommending this, and I'm assuming that we're in agreement.

The Chair: We'll find out shortly. Any comment?

Ms. Wynne: I'm not going to support this amendment because my question would be, why five? Why not three, why not six, why not two, why not seven? I think we need the flexibility so that in the terms of reference there can be the time established—

The Chair: If you could slow down.

Ms. Wynne: I'm sorry; I'm talking too fast. I really apologize.

I would like to see flexibility in the terms of reference so that the appropriate term of serving on these committees could be put in place for each sector.

Mr. Marchese: I thought we were going to be in sync, but clearly not even with this.

Mr. Ramal: We are.

Mr. Marchese: What you have, Michael Gravelle, are five-year cycles. They're not three-year cycles; they're not two-year cycles. You didn't agree with that, remember? We've got five-year cycles.

If that is true, the assumption is that those people are going to be there for five years. To have the flexibility to remove people after two or three years and bring somebody new midway I don't think is consistent with what you're thinking or with the cycles that you've planned. I think people who sit on those committees would want to know that they are there for that length of period and have the continuity. So in my mind it makes a lot of sense. I don't really know why you want the flexibility to change the cycle, given that you've adopted five-year cycles.

Mr. Jackson: This is a fairly important amendment because it deals with the issue of continuity and the development of the expertise and not leaving people to the vagaries of changes of government and mandate and so on. Historically—and that's still the system that the bureaucrats recommend to cabinet ministers; I know because I had to go through it as well—the standard is one-, two- and three-year appointments. That's the standard.

I would find it difficult, and that's why on occasion we've put it into legislation—you don't want to have someone, get them all cranked up, they get a one-year appointment, and then for whatever reason somebody doesn't like their contribution and they're politely asked—we know the informal system is that they check

with the chair of the committee. The chair of the committee says, “This person is a troublemaker. This person hasn't contributed. Their attendance record”—whatever, and they get a nice letter from the minister saying, “Thank you. The province appreciates your volunteer efforts.” That's the end of it.

This committee isn't the same as regulating the ophthalmologists of the province with a board of 20: 10 professionals and 10 lay people. This is a very unique kind of committee that is tapping into the kinds of human resources that are out there. We're not doing these people a big service. The bureaucrats are going to give you the advice that you can't have everybody coming on a five-year cycle or a two-year cycle; you have to stagger them. That's fine, but we need to commit to these people a certain amount of time for them to be investing into the work they're going to do.

As well, I think it's been referenced and we'd better pray to God that we pay the legitimate out-of-pocket expenses of these people in order to come to Toronto, if that's where they are going to be summoned to do their work. But this is going to be very, very difficult, and this committee has heard my concerns in the past. I had to use my own credit card to pay the expenses for people to come to Toronto, because the bureaucrats simply said, “We don't pay in advance; it's when they submit their bills.” The disability community just doesn't have the liquid amount of assets in order to do that—nine out of 10 of them don't. So the length of the appointment is important, and how we treat these people in terms of their ability to come to Queen's Park and participate. These things had better be set out very clearly; otherwise we're just not going to get the level of participation that's required to make this bill successful. And this is only one of a series of issues.

I'm open to any suggestions from the government, but in the absence of that, you're going to be left with the traditional bureaucratic response: one-, two- and three-year staggered appointments, and then you start the cycle all over again. I understand the purpose of that, so that you don't lose all of your continuity. In this instance, if your issue is that you don't want to saddle the private sector, that's fine; work it out in your regs. But at least when we, as committee members, are creating legislation, we should be able to protect the disability community, that they'll be there for a reasonable length of time.

As my colleague has said, we didn't create the five-year cycles. The five-year cycles were envisaged in the previous bill, they are reinforced in this bill, and we think that's reasonable.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.
The next one is page 29 and 29(a).

Interjection.

The Chair: I'm sorry. Before we go on?

Mr. Jackson: Very briefly, I want to further amend that one section. I move that section 8 of the bill be amended by adding the following section:

"Same

"4.1 The minister shall ensure that the majority of the members of a standards development committee are persons with disabilities or their representatives."

The Chair: Any comments? Is there any debate on the amendment?

Mr. Jackson: I think I've stated for the record what my concerns are here, that this is a fundamental aspect of this legislation. If you ask the disability community, they will tell you that it is their assumption that the government is going to move in this direction. I consider this a very important amendment and I believe it comes close to the commitment this government has made to the disability community. It certainly was a commitment that I made in Bill 125, and I suspect that should also be entrenched in this legislation.

Mr. Ramal: Also for the record, Bill 118, those motions and the whole thing is all about the disability community. We want to make sure we eliminate barriers. We want to make sure also that they're represented in any committee being established. But when we say a number, it means that we put some kind of limit on the ability of the minister and take away the flexibility from her or him. That's why we are against it, not against the disabled community. As a matter of fact, all of us are working on this bill for the disabled community, but we cannot, in any fashion, impose some kind of limitation on the minister or the ministry.

Mr. Jackson: Then you want to uphold the minister's right to discriminate against the composition of this committee for persons with disabilities. Is that what you're saying now?

Mr. Ramal: No. It could be that the whole committee is from the disabled community, it could be 5%, it could be 20%, whatever the minister or the ministry think is possible and advisable and will help the ministry to go forward with this bill and implement it.

Mr. Jackson: I think you're deluding yourself if you think, by your own statement, that you can have a standards development committee with 5% of the members from the disability community. Anyway, it's a principle, and that's what some of these amendments are about: where you stand on that principle.

1730

Ms. Wynne: I'm just wondering if I could have a comment from staff on whether there's a policy or a legal—I'm just not sure whether there's a rationale that we could hear.

Ms. Hewson: The expectation was that this would be a balanced process; that there would be full participation by people with disabilities, by the sector that was affected, by the ministries that are affected and then, with the amendment, by other people whom the minister considers advisable. So it's more of what I understand to be the usual kind of standards development process, where there's a balanced approach.

Ms. Wynne: So in fact, what we're trying to get at here is a truly collaborative process that doesn't tip the balance one way or the other. That discussion comes up with the best standards possible, given the realities of both the public and private sectors' and the disability community's needs. Is that accurate?

Ms. Hewson: That's correct.

Ms. Wynne: Intuitively, I would like to have a process that is going to advantage the disability community. Personally, intuitively, that's what I would like to see. On the other hand, I'd like to see the best standards developed, given the possibilities and realities in the community. That's why I would support that collaborative, balanced process.

Mr. Jackson: Frankly, I'm at a loss to understand it. When the minister tabled this bill in the Legislature, I made the statement that one of the defining features between the two legislations was that the first bill was an empowerment bill and the second was a negotiated instrument. We're now seeing clear evidence of that. I'm not 100% sure I subscribe to that.

Over my 20 years, I've worked on all sorts of legislation. The one that immediately comes to mind is the Ontario College of Teachers Act, which gives the teachers' union 21 representatives and the public 20. It's very hard to create systems that are so perfectly balanced. When it comes to the College of Teachers, we seem to feel that it's significant enough that we should empower teachers in that model so that they have that much of a say. Now Ms. Wynne is suggesting that there may not fully be the expertise in the disability community to work on their own regs, their own guidelines and their own standards. That would cause me great concern.

I think we are creating legislation that impacts individuals. Either we're empowering them, which is the model I thought we should be moving forward on—it's obviously a model that's fallen in some disrepute, and now we're going to negotiate outcomes over 20 years. So I, for one, am rather disappointed. The fact that a majority can sit on the accessibility standards council is fine, except that the council isn't empowered to actually draft the regs and develop standards and codes. It is coming from this negotiated instrument of a mixture of bureaucrats, special interest groups and, oh, yes, the disability community as well.

I consider this an important amendment. I'm rather distressed that part of the rationale is that the disability community themselves may not have the expertise or the ability to get the very best standards out there.

Ms. Wynne: I certainly wouldn't want to cause distress. The regulation of a profession by that profession is

quite a different thing from the setting of standards for the whole society. I don't think they are comparable. That's why I stand by my position of supporting a balanced process for the setting of standards.

The Chair: Is there further debate on the motion? I will now put the question. Shall the motion carry?

Ayes

Jackson.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We'll move on to the next one, pages 29 and 29(a).

Mr. Marchese: I move that section 8 of the bill be amended by adding the following subsections:

"Accessibility standards re: education

"(5.1) In addition to the standards development committees that will develop accessibility standards for particular industries, sectors of the economy and classes of persons and organizations, the minister shall establish a standards development committee that shall develop standards to ensure that,

"(a) students in schools under the Education Act are, as part of the school curriculum, sensitized to and made aware of the existence of barriers to persons with disabilities and of related accessibility issues;

"(b) before becoming authorized to practise as a professional engineer or as an architect in Ontario, a person receives training on how to construct buildings and structures that are accessible to persons with disabilities; and

"(c) persons training to practise as a professional engineer, as an architect or in any other profession that the committee considers appropriate receive training on how to run their practices and on the measures, policies and practices to implement in their practices so as to remove and prevent any barriers to persons with disabilities.

"Same

"(5.2) The standards development committee established under subsection (5.1) shall consult with school boards and the governing bodies of appropriate professional associations in developing the accessibility standards referred to in clauses (5.1)(a), (b) and (c)."

Mr. Chair, in the second reading debate on this bill on October 12, 2004, the minister stated the following:

"The next principle: public education. This area is my passion," she reveals. "I will use every tool available to help shape a change in attitude, a change in values. Over and over again, people with disabilities have told me that the biggest barrier of all is one of attitude. On this score, I look forward to working closely with every MPP to help foster a true culture of inclusion for people with disabilities."

It's inspiring to hear that. It's from those words of inspiration that I included this in my motion, because she

wants to work with us and I want to work with her. This amendment speaks to that. If people like me don't help her, I don't know who will. Maybe there are others. I don't know, but at least I'm trying.

This recognizes that education is a key component of how we change attitudes. If you want attitudes to change for the long term, you do it in the school system. Those very children who become young adults, who become architects or become engineers, will remember as they study their professions what they learn at the elementary grades, having to deal with issues of accessibility and issues of disability. Clause (a) attempts to help the minister do what she wants, and clauses (b) and (c) are very much in line with that thinking.

It is my hope that the members opposite will support the minister in this regard.

Mr. Ramal: We're not going to let you down on this one here. We've got to bless your heart. I guess the minister and the ministry also believe in public-wide, province-wide awareness in order to create attitudinal change and an educational mechanism in order to educate the public. That's why we are proposing, I believe in subsection 32(3), an amendment to—

The Chair: Which page would that be, Mr. Ramal.

Mr. Ramal: It would be page 84—to address your concern. The government is proposing to move that subsection 32(3) of the bill be amended by adding the following clause: "consult with organizations, including schools, colleges, universities, trade or occupational associations and self-governing professions."

We are going forward in this proposal. Hopefully, you'll be happy with it. That's why we're not going to let you down, and hopefully you'll support our motion.

1740

The Chair: Would that satisfy your question, Mr. Marchese?

Mr. Marchese: That was a bit uninspiring, I must admit.

I followed the page very carefully in the motion, and subsection 32(3)—it's so hard to get to these pages. Let's see what it says there. Let me bring you there for a second:

"At the direction of the minister, the directorate shall"—this is the one that says to add the following:

"consult with organizations, including schools, school boards, colleges, universities, trade or occupational associations and self-governing professions, on the provision of information and training respecting accessibility within such organizations."

It's not the same; they're two different things.

First of all, I remind the member that it's "at the direction of the minister." The minister may or may not do it. By the way, you may not be in government. We might have a Conservative government; God forbid, but we might.

Mr. Ramal: It's scary, isn't it?

Mr. Marchese: I find you guys equally scary, I've got to tell you.

You might have a different government that may or may not decide to do anything in this regard. You might have your own government that might decide, "We can't do that either." It's at the discretion of the minister. Nothing will happen unless the minister says, "You will do this." That is not consistent with my motion. Your minister is not going to be happy with your defeating an amendment that speaks to her passion.

Should I remind you, Mr. Ramal, that—

Mr. Ramal: No, no.

Mr. Marchese: Let me remind you. She said, "The next principle: public education. This area is my passion." How could you forget that? "I will use every tool available to help shape a change in attitude."

Please, we've got to help her out. This is the only way to do it. Your suggestion—maybe it slipped the minister's attention or mine, but what you referred to me doesn't educate the public, and it doesn't deal with young people learning where the barriers are and how to remove them in the future. It won't do that. I think she's going to be awfully disappointed with all of you in this regard, and I'm going to point it out at third reading debate. I can assure you of that.

The Chair: Is there any further debate?

Mr. Jackson: Just a question. Mr. Marchese, this is under the section dealing with the roles and responsibilities of the accessibility standards development committees, correct?

Mr. Marchese: Yes.

Mr. Jackson: So you're suggesting that the one on education should do these things.

Mr. Marchese: That's right, a standards committee that will do the following: (a), (b) and (c)—exactly.

Mr. Jackson: But the way it's worded here, I'm not 100% sure if you're suggesting that another standards committee deal with this implementation or that the standards committees so affected or so charged or so—I'm trying to tie it more directly.

Mr. Marchese: Yes, "the minister shall establish a standards development committee that shall develop standards to ensure that"—in these areas. It's a totally different standards committee.

Mr. Jackson: OK. That wasn't abundantly clear to me. I really like the principle, and (b) in particular. When I did the Alzheimer strategy, we specifically set out in one of the recommendations that the government shall host, on a biannual basis, a forum for the architect community and the broader community to determine that the best design features and program etc.—it's not just the bricks and mortar; it was the program for training. To my knowledge, that still continues to this day under the Alzheimer strategy, every two years. That was put right into the strategy.

I think you're on to something here. I know we talked to architects. I'm not sure about professional engineers—I'm trying to get my mind around that—but clearly, architects on the limited amount of discussions they have in terms of disabilities issues and accommodation.

Anyway, I will support this.

Mr. Marchese: Anyway, it appears they're going to defeat it, Cam.

Mr. Jackson: Well, I think it's got tremendous merit, and I know the minister speaks to this frequently.

Mr. Marchese: It's her passion. They're going to disappoint her.

The Chair: OK. Let's have some comments one by one.

Mr. Jackson: Mr. Chairman, I had a question for clarification. Thank you.

The Chair: Is there any further debate?

Mr. Marchese: I should point out that many deputants spoke to this. It isn't something that I invented on my little own.

Mr. Leal: Just quickly on this, I believe it's page 63 of the Rae recommendations. The reason I know it is because I am the parliamentary assistant to the Minister of Training, Colleges and Universities. Mr. Rae, in his recommendations, certainly talked about the issues relating to disabilities in the community colleges and universities.

The other side of it—and I just reflect on experience. I think it came out of Mr. Jackson's Bill 125. Many municipal committees that were established, the local councils for disabled persons, had a direct liaison, because a lot of the activity associated there was municipal buildings and design of municipal buildings and the future design of municipal buildings. So those architects and design people who were going to be actively involved in the design of retrofitting of existing municipal buildings and future municipal buildings that all municipalities have in their capital program looking five and 10 years forward were certainly upgrading their skills to make sure they could avail themselves of those opportunities, particularly in the municipal area. Mr. Chair, I know you've had experience with that personally in your former elected position.

Ms. Wynne: One of my concerns about this amendment is that it assumes that education is not a sector, the way the bill is written. I have certainly not made that assumption, and in fact have assumed the opposite. I'd like to have some clarification from staff. I've assumed that education would very well be a sector and there would be standards that would be put in place vis-à-vis education.

Ms. Hewson: It would certainly be a sector or part of a sector, depending on how broadly you define "sector." This would certainly be the kind of thing that one would anticipate the educators who would be participating and certainly the representatives of persons with disabilities and persons with disabilities would be very likely to be addressing in the standards.

Ms. Wynne: So, in fact, the rationale for not accepting this motion is that we're not going to do the same thing for transportation, and we're not going to do the same thing for construction; that those terms of reference for those sector committees are going to be laid out again in the terms of reference. So I think that this will be redundant, given the process going forward.

Mr. Marchese: It won't be redundant. This won't happen. This is a key component of what I'm speaking to. Unless you make it clear, in my view, it won't happen. We're simply making it obvious what is key. You want to make sure that students are sensitized, are aware of barriers, and are aware of their removal from an early age. You've got to make it clear. You can't say, "Some teachers might be involved," or "We might or might not have the education system be involved directly." My sense is that it won't happen unless you specifically say that. This is key. A lot of people with disabilities are telling us this is key—the education and training of not just engineers or architects, but they mentioned so many other groups. They mentioned doctors, lawyers, health care providers, teachers, social workers. They mentioned everyone. There's a whole list. This is not limited. You want people to be trained in understanding these issues. This is very specific. Some of it may or may not happen. We may or may not touch on some of these professions. The education system may or may not be touched fully, but there might be some reference to it in some way.

Anyway, it doesn't really matter. Let's vote on this.

Mr. Jackson: Let's not lose sight of the fact that the purpose of this amendment is to put it into the school curriculum. I hesitated to ask Mr. Marchese if we could separate these. I really fundamentally believe if we could divide on this that surely (5.1)(a) has to be supported by everyone. Both Ms. Wynne and I have served on school boards, I believe, and we understand the point that Mr. Marchese is making. I happen to believe very strongly that (a) is one that absolutely should be approved. Ms. Wynne raised the question.

Mr. Marchese: There's no support for it.

1750

Mr. Jackson: But that's not the point. The point is that surely these marching orders can be amended slightly when committee members—

Mr. Marchese: Things are changing.

Mr. Jackson: We can only appeal to, as Lincoln said, their higher souls, the essence of democracy.

However, the reason we don't have guarantees that education is going to be in here is because you've defeated both an NDP and a PC motion that says within six months we must, in this province, have an accessibility standards development committee for education. That has been defeated by the government.

I know from my own experience, my two youngest daughters, Lauren and Michelle—one's in high school, one's in elementary school. There was a remarkable change, which they generated on their own, in terms of their experiences having a disabled student in their classroom. I was very proud of how they became sensitized. Yes, it was through an issue with their teacher, it was an issue of the way they were raised and it's an issue of the way the community of that school operates.

Not every student gets that opportunity, nor should it be the simple act of having, by happenstance, a disabled child in your classroom. When I listen to my daughters carefully, I get this overwhelming message and question

about what else we're doing. As they incorporate them into their own personal lives, then they have to tell Dad there are certain issues around their accommodation. One girl is in their theatre group; they have to accommodate around the theatre group that my daughter's active in. We would be amazed at how significant an instrument those children are for reform.

We already know that this bill could take upwards of 20 years. I think it's essential that we get at those children right away with the promise that this legislation has, at least on paper. So if you thought, Mr. Marchese, there was any hope that the Liberal members of this committee might feel merit in the students in our schools and that this should be part of the curriculum, I think that's an essential piece. If you think by separating it you might have a chance, I would support that. You simply have to ask for it.

Interjection.

Mr. Jackson: I can see where (c) and (d), particularly, may give them a bit of—(c), anyway, but (a) certainly should be defensible. I know the minister herself has spoken to this, so I would be amazed if this doesn't go through.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one is page 30.

Mr. Jackson: I move that subsection 8(6) of the bill be struck out and the following substituted:

"Terms of reference

"(6) Within 15 days of the appointment of the members of a standards development committee, and after consulting with the members of the committee, the minister shall fix the terms of reference for the committee and shall, as part of the terms of reference, establish the deadlines that the committee must meet throughout the various stages of the standards development process.

"Publication of terms of reference

"(7) The minister shall publish the terms of reference of a standards development committee in a newspaper of general circulation in the province and shall post the terms of reference on a government Internet site."

The Chair: Any further debate?

Mr. Leal: Just quickly. I think if we go ahead to page 32, which will be a government amendment, in my view, it covers the essence of what Mr. Jackson is proposing.

Mr. Jackson: Reading the amendment that the government is poised to table in a moment, am I to understand that they're not fixing any firm time frames here? You're speaking to the issue of posting, and that's

appreciated. But there's no real time—is there any commitment in that area?

Mr. Ramal: Subsection 8(7): We're talking about fixing that term of reference, which is clear on this issue, so there is no need to speak about it in your motion, Mr. Jackson. That's why in order to maintain our position and keep the same format of the statute, of the bill, I think subsection 8(7) will speak about it.

Mr. Jackson: So you're silent on the issue of the amount of time—

Mr. Ramal: We talked about it before.

Mr. Jackson: I listened to Mr. Fonseca; he kept saying about how fast we can get this thing done. So there's no time frame here to make sure that the people get on with the business of—OK, thank you.

Mr. Marchese: I support this motion, obviously. The point of establishing deadlines is to give everyone, us and people with disabilities, a sense of what those timelines are. It is so good to have a time frame. I understand the government's reluctance to do that, because they don't want to pin themselves down to any time frame. That is one aspect of the problem, which is a political one, and the other one is a social one, a real question of people with disabilities saying, "I really would like to have a sense of what we're going to do with these things," and their right to know. Governments change, and if governments do change, those timelines and time frames are likely to change.

But if you set some time frames and deadlines, everybody knows what the stage is and what needs to be done to work at whatever deadline you establish for yourself. I don't like giving governments the flexibility not to do. Establishing deadlines says they will do it in the timeline that is established. I certainly support it.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one is page 31. Mr. Marchese, please.

Mr. Marchese: I move that section 8 of the bill be amended by adding the following subsections:

"Meetings open to public

"(7) The meetings of a standards development committee shall be open to the public, except as required to protect the privacy interests of individuals or organizations.

"Information to be made available

"(8) Every person has a right of access to a record or a part of a record in the custody or under the control of a standards development committee unless,

"(a) the record or the part of the record falls within one of the exemptions under sections 12 to 22 of the freedom of information act;

"(b) the committee is of the opinion on reasonable grounds that the request for access is frivolous or vexatious."

This is very clear. Meetings should be open to the public. There is absolutely no reason why any meeting should not be open to the public, absolutely none, in the same way that what we do here in government, generally speaking, is consulting in public, including the committee hearings. People should hear and see what is going on. That's what part of this amendment does. And the information should be made available to the public, and every person has a right of access, except and unless as specified in (a) and (b). It's very, very obvious.

Mr. Fonseca: Mr. Marchese, to increase the openness and transparency of this standards development process, the government has proposed an amendment that would ensure that all those meetings are minuted and those minutes are available to the public. This would ensure the confidence of all those across the province who would be able to read those minutes and see the progress that is being made in terms of the development by each of those standards committees.

Mr. Marchese: It's really an embarrassing thing; it really is. This ought to embarrass the government members who are here, and the government in general. To simply say the minutes are available—I don't understand how you could defend that. How could you not support a motion that says meetings should be open to the public? I don't understand it.

"We're going to meet and we're going to make the minutes available to you. You should be happy. None of you, people with disabilities in this room, should be unhappy about the fact that we're not going to hold a meeting in public." It boggles the mind. Why wouldn't you do that? On the basis that you're going to make the minutes available and that should suffice and people should be happy? It makes no sense. It absolutely makes no sense. It's not a good justification, I'm telling you. It's embarrassing.

Mr. Fonseca: This process would continue with the openness and transparency. People will be able to read the minutes, see the progress that is being made, where they're at, and make sure that it moves in a timely manner so that things don't get cumbersome.

Mr. Marchese: How does having an open meeting prohibit that from happening? How do open meetings prevent you from doing that? I don't get it.

Mr. Fonseca: As open meetings are taking place, it would depend on the venue, where it's taking place, in what room, where that committee is meeting. This way, the minutes do get out. Everybody is able to see those minutes and able to see the progress and, I'm sure, able to deliver feedback to each of those standards development committees.

Ms. Wynne: I think the other reality is that these are going to be very difficult, contentious conversations.

What we want to do is allow these committees to form as a group, to not be in a position where they're having to perform for a particular audience or not. We want a frank conversation in these standards development committees so we can get the right answer.

Posting the terms of reference and posting the minutes makes them public. It doesn't delay the process. It means they can move ahead quickly and, I think even more importantly, they can have the frank, complex discussion that's needed.

Mr. Marchese: Chair—

The Chair: Can I let Mr. Fonseca complete—

Mr. Fonseca: No, go ahead.

The Chair: Mr. Marchese, you're next then.

Mr. Marchese: I'm a bit dumbfounded by your arguments. Of course these issues are going to be contentious. They always are. Everything is. Everything we do in government is contentious. But that doesn't mean we say to these people who are here, for example, "You can't come in because this is a contentious issue," or whatever issue we're talking about, whether we're discussing pit bulls or rights that we extend to gays and lesbians. They are all complicated, but as legislators we deal with it. If a standards development committee is set up to deal with whatever issue and difficulties arise, that's up to that committee to deal with them, in the way the Chair has to deal with whatever problem arises here today. But to say that they are contentious and therefore we should just allow the committee to quietly do its work so as to prevent anyone being upset or being obstreperous or difficult—I don't know; it's just not right.

Let's vote. I want to move away from this debate. It's embarrassing.

The Chair: Mr. Fonseca, you're next, unless somebody else wants to join in.

Mr. Fonseca: I'd like to move a motion to section 8 of the bill.

The Chair: No, we are dealing with this right now.

Mr. Fonseca: OK.

The Chair: Is there any further debate? If there is no further debate, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Gravelle, Leal, Ramal, Wynne.

The Chair: The motion does not carry. The next one is number 32.

Mr. Fonseca: Now I'd like to move a motion to section 8 of the bill.

Mr. Marchese: It's 6 o'clock, Mr. Chair.

The Chair: It is 6. I was trying to finish the section, but since you called it, we will end this meeting. We will resume again tomorrow at the same time, at 3:30 or so.

Thank you very much. See you tomorrow.

The committee adjourned at 1803.

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Mr. David Lillico, counsel, legal services branch,
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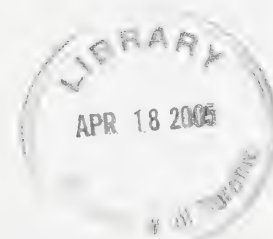
Mardi 5 avril 2005

Standing committee on social policy

Accessibility for Ontarians with
Disabilities Act, 2005

Comité permanent de la politique sociale

Loi de 2005 sur l'accessibilité
pour les personnes handicapées
de l'Ontario



Chair: Mario G. Racco
Clerk: Anne Stokes

Président : Mario G. Racco
Greffière : Anne Stokes

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 5 April 2005

Mardi 5 avril 2005

*The committee met at 1534 in room 151.*ACCESSIBILITY FOR ONTARIANS WITH
DISABILITIES ACT, 2005LOI DE 2005 SUR L'ACCESSIBILITÉ
POUR LES PERSONNES HANDICAPÉES
DE L'ONTARIO

Consideration of Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities / Projet de loi 118, Loi traitant de l'élaboration, de la mise en oeuvre et de l'application de normes concernant l'accessibilité pour les personnes handicapées en ce qui concerne les biens, les services, les installations, l'emploi, le logement, les bâtiments et toutes les autres choses qu'elle précise.

The Chair (Mr. Mario G. Racco): Good afternoon. Welcome to the meeting of the standing committee on social policy and consideration of Bill 118, the Accessibility for Ontarians with Disabilities Act.

Once again, I would like to point out several features that we hope help to improve accessibility for those who are participating in and attending meetings regarding Bill 118. In addition to our French-language interpretation, we will be providing at each of our meetings closed captioning, sign language interpreters and two support service attendants available to provide assistance to anyone who wishes it. I don't see them here today.

The Clerk of the Committee (Ms. Anne Stokes): They should be here.

The Chair: They are here. They will be coming.

The meeting today will be broadcast on the parliamentary channel, available on cable TV tomorrow at 10 a.m., and it will be rebroadcast on Friday, April 8. Also, the Webcast broadcast of this meeting will be available tomorrow, at the same time as the television broadcast, on the Legislative Assembly Web site at www.ontla.on.ca.

Now we will resume our clause-by-clause consideration of Bill 118. We left off at the last meeting considering amendments to section 8. The next motion in order is a government motion to amend subsections 8(7) and (8) on page 32 in your package.

Mr. Peter Fonseca (Mississauga East): I move that section 8 of the bill be amended by adding the following subsection:

"Committee members' allowance

"(6.1) The terms of reference may,

"(a) provide for the minister to pay members of a standards development committee an allowance for attendance at committee meetings and a reimbursement for expenses incurred by members in an amount that the minister determines; and

"(b) specify the circumstances in which the allowance or reimbursement may be paid."

The Chair: Any debate on the motion?

Interjection.

The Chair: We are dealing with page 32, which is subsections 8(7) and (8). Any comments, Cam? Again, if there are no comments, I'll call for the vote.

Mr. Cameron Jackson (Burlington): I have a question. I've had calls on this one piece. Previous motions have been defeated that talk about the time. Could anyone from the government side—

Mr. Khalil Ramal (London-Fanshawe): On a point of order, Mr. Chair: You don't have it in your binder. That's probably the confusion. I'm just going to copy it and give it to everyone.

The Chair: OK.

Mr. Ramal: This one here is not in your binder.

The Chair: So then why don't we move on to—

Mr. Ramal: It's just coming.

The Chair: Do you wish me to move to the next item, Mr. Jackson, and we'll come back to this when you've had a chance to read it, or are you clear?

Mr. Jackson: I was receiving some instructions from legal counsel, so I wasn't listening to the motion. I assumed it was in writing. I wouldn't even know what the motion is. I'm looking at this one, which is on our page 32. This precedes page 32?

Ms. Kathleen O. Wynne (Don Valley West): No, Mr. Chair. I believe the motion that was being brought on the floor should follow 34. I believe we're on 32 at this point. So if we did 32, and then when the motion is photocopied—

The Chair: That's what I called for, 32.

Ms. Wynne: Yes, I know. I understand.

Mr. Jackson: Why don't we just withdraw the motion. Then we can proceed, and we can re-enter it.

The Chair: Mr. Fonseca, when you read it, did you read 34 or 32?

Mr. Fonseca: I did not have a number on that motion.

The Chair: Let me go to 32 and we will deal with this matter later on. Mr. Ramal, is anybody going to introduce page 32?

Mr. Ramal: I move that section 8 of the bill be amended by adding the following subsections:

“Terms of reference made public

“(7) After fixing the terms of reference under subsection (6), the minister shall make the terms of reference available to the public by posting them on a government Internet site and by such other means as the minister considers advisable.

“Minutes of meetings

“(8) A standards development committee shall keep minutes of every meeting it holds and shall make the minutes available to the public by posting them on a government Internet site and by such other means as the terms of reference may provide.”

1540

The Chair: Any more comments? Mr. Jackson, do you wish to comment?

Mr. Jackson: This is very clear, and I support it. I just wanted to know—if the government members have been advised—are we any closer to knowing when the terms of reference will be ready in order to begin this process?

Mr. Ramal: To my knowledge, if this bill passes, hopefully as we finish, we'll start working on the—

The Chair: Shortly after?

Mr. Ramal: Yes.

The Chair: OK.

Mr. Jackson: So the answer is—

The Chair: Shortly after the bill.

Mr. Jackson: Yes. So there still is no work done on the terms of reference yet?

Mr. Ramal: Hopefully, if the bill passes, we'll work on them.

Mr. Jackson: Any idea how long that might take? Usually the bureaucrats can advise the minister how long. We've abandoned the notion of a time frame. David Lepofsky and the ODA Committee specifically said, “We'd like to have some firmer time frame commitment.” My six months isn't flying; that's fine. To be fair, and I realize I'm dealing with not a lot of institutional history here, it's quite customary to have some comment about how long we think it might take to establish the terms of reference and the process that will be undertaken. If you can't answer that, then that's fine, but if you can, it's rather helpful to the ODA community, which has expressed some concern about the potential time frames that this may take.

It's quite common in legislation to draft a specific time frame that literally forces the minister to get the job done within a specified time frame. I'm not questioning the motive here. I'm simply saying that it's an instrument that's quite often used on something this sensitive.

The Chair: Mr. Jackson, I believe the PA did say that they're going to work just after the bill is addressed.

What I would suggest to Mr. Ramal is that maybe you can discuss the matter and notify Mr. Jackson.

Mr. Ramal: Sorry, I don't have a definite answer, but we have a clear direction from the minister that if this bill passes, we'll work on it right away. That's my answer at this point in time.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Jackson, Leal, Ramal, Wynne.

The Chair: All in favour; 32 carries.

Therefore, shall section 8, as amended—

Interjection.

The Chair: Would you like to move it now, please?

Mr. Fonseca: Mr. Chair, if we could vote on the walk-on that I just read previously.

The Chair: Would you mind just reading it into the record, please?

Mr. Fonseca: I move that section 8 of the bill be amended by adding the following subsection:

“Committee members' allowance

“(6.1) The terms of reference may,

“(a) provide for the minister to pay members of a standards development committee an allowance for attendance at committee meetings and a reimbursement for expenses incurred by members in an amount that the minister determines; and

“(b) specify the circumstances in which the allowance or reimbursement may be paid.”

The Chair: Any debate on the motion?

Mr. Jackson: It's rather out of the ordinary. I have a PC motion coming up in terms of compensation. It's my understanding of the standard requirement under the act that the Lieutenant Governor in Council, which is cabinet, for laypeople to understand, will in fact let that rate be established through cabinet.

The reason I support that is because I think it's important that cabinet support the minister in terms of the levels of compensation. Again, I had this challenge when I took it forward to cabinet and I approved the chair's salary, which was about \$85,000 or \$90,000 a year, and the vice-chair of the council. Then we set compensation for the members of the council and what expenses would be covered.

I'm not 100% sure that leaving that to the confines of a ministry is in the best interests of the disability community, partially because the minister has yet to determine if she has much of a budget in this regard, and I think this obligates the entire cabinet.

So although I support improving this section of the bill, which addresses the issue, what we heard from the disability community were things like, “We want to be fairly compensated.” As you know, people who are approved by cabinet for provincial appointments to serve can receive, I've heard, anywhere from as low as about \$75 a day to as high as \$500 to \$800 a day. I don't wish

to raise expectations in the disability community. The larger issue for me is the costs associated with their attendance.

There is the additional issue, and this is why I would like cabinet to deal with this, of those persons who are on ODSP who would receive compensation without compromising their ODSP payments. Again, the minister, in and of herself or himself, does not have the right to override that, but cabinet would be able to make the determination to protect persons with disabilities whose sensitivity of their supplementary income—I first encountered this when I constructed the CCAC infrastructure in the province as the Minister of Long-Term Care, and I insisted in the guidelines that disabled persons participate because they were part of the group that received services. I had resignations all over the place because people said, “My per diem for my attendance put me over the max,” and therefore they put at risk what at the very beginning was their welfare, which our government changed to the ODSP plan.

So it is a friendly expression of good advice that I can see an amendment coming out of the minister’s office saying, “Let me decide what it is,” and that will be fine, but there are some larger issues. I’m not 100% sure that Cabinet Office may have actually seen this amendment, and they might rather have suggested that we give that authority to cabinet to support the minister. What does that mean? It means that I support the principle. I just think we would protect people better if it were clear that this was a schedule of compensation.

There’s another thing that this raises. I don’t think the disability community wants any stock in a decision that might lead to, “You represent a business, and you represent a hospital. You don’t get a per diem. Only disabled persons get per diems.” None of us wants any stock in that. That’s not the trend toward normalization and equality that the bill speaks to, nor do we wish to entertain it. So the only other reason the minister would need that flexibility is in order to say, “These businesses don’t have to get a per diem.” You can’t treat people differently, and that’s essentially the message we’re getting from the disability community.

I’ve spoken enough. I’ve made my points. I really would rather have hoped that you would do this in the normal way of drafting, which would be that the Lieutenant Governor in Council—once that’s cabineted, that cannot be messed around with and you’ve got to go back to cabinet if you want to start cutting the terms. Otherwise, the minister can make a decision, as was done recently to reduce the compensation for the members of the access council of Ontario. Those disabled persons who served had their per diems and their honorariums drastically reduced. I just don’t think you do that to the disabled community when they start into a program with a government. You don’t change it in midstream for them.

1550

That’s my best advice and I would hope you would follow it. Having said that, I would ask guidance. Would

it be possible, should my motion pass, even though they contradict each other, that section 6 could be amended?

The Chair: When we address your motion, if the motion is accepted, if the motion carries, then of course whatever the motion says would be accepted, but we have to go through the process first.

Mr. Jackson: Yes, all right. It’s tricky. The other thing I want to bring to the committee’s attention and to the attention of the disability community who are watching today is that the government says there “may” be compensation for the disabled community to participate. My recommendation says they absolutely “shall” be compensated, and that we will hold the cabinet accountable for the support they give to the minister and to this legislation.

I will unfortunately not be able to support this bill. I just realized that the terms of reference “may” include an ability for the minister to pay people. I don’t think that’s what the minister said, and I don’t think that’s what we have been telling people. For those who were on the road with me, I remember specific meetings where we indicated that there would be compensation.

So unless you want to change that—why don’t I just do that, Mr. Chairman? Why don’t I suggest an amendment to Mr. Fonseca’s amendment, that the amendment be amended in line 6.1, terms of reference: delete the word “may” and include the word “shall.” I’ve spoken to that.

The Chair: The motion is in front of us. There is an amendment to the motion, which means I will be taking a vote on that amendment after there is any further discussion. Is there any discussion on changing “may” to “shall”? There is none.

I will now put the question. Shall the amendment to the motion carry?

Ayes

Jackson.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment to the motion does not carry. Therefore, I’m left with the original motion. Is there any further discussion on the motion?

Mr. Jackson: Let me ask the parliamentary assistant. Is it your marching orders to come in here and tell the disability community that they may not get compensated for participating? Is that what we’re to get from this? That is not what occurred at the public hearings.

The Chair: Mr. Ramal, do you wish to answer?

Mr. Ramal: I think the motion was clear. It’s not worth mentioning. It’s up to the minister to decide the way she’ll be able to compensate certain groups and other groups according to her judgment, and also with the advice of people around her or him. I have no discussion.

Mr. Jackson: My second question: Do you have a similar motion that covers off the members of the accessibility standards council?

Mr. Ramal: No.

Mr. Jackson: So you're not going to pay them at all.

Mr. Ramal: We're just dealing with section 8.

Mr. Jackson: By Christ, what are you guys doing? OK, that's fine.

The Chair: If there is no further debate, I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

Shall section 8, as amended, carry?

Mr. Jackson: Do I not have some amendments, Mr. Chairman?

The Chair: You have more amendments on section 8?

Mr. Jackson: Yes, on section 8.2 of the bill. I've got page 34.

The Chair: That was section 8 we were addressing. The next one is section 8.1.

The Clerk of the Committee: It's a new section.

The Chair: —which is a new section. So we've split them. We have addressed all the amendments under section 8. Yours is 8.1.

Mr. Jackson: It's 8.2

The Chair: You'll be next.

Shall Section 8, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion, as amended, carries.

The next one is page 33. Mr. Jackson, your section 8.1, please.

Mr. Jackson: I move that the bill be amended by adding the following section:

"Compensation

"8.2 The members of a standards development committee shall be compensated for their work on the committee and reimbursed for expenses in relation to that work in an amount to be determined by the Lieutenant Governor in Council."

The Chair: I'm just going to give you the proper page—33.

Mr. Jackson: No wonder. You were right, 8.1. I was on 8.2; I apologize.

The Chair: That's why the page number, I think, is the best reliance.

Mr. Jackson: It is, and I will endeavour to pay closer attention to the Chair's wise instructions.

I move that the bill be amended by adding the following section:

"Chair

"8.1 The members of a standards development committee shall elect a chair from among themselves; when the chair is absent through illness or otherwise, the committee may appoint another member as acting chair."

Very self-explanatory, but there was some concern to make that less of a political appointment process and more of a spirit of collegiality in terms of negotiating outcomes that the Chair is chosen from the standards development committee.

The Chair: Any debate on the motion? There is none. Shall the motion carry?

Ayes

Jackson.

Nays

Craitor, Fonseca, Lean, Ramal, Wynne.

The Chair: The motion does not carry. Therefore, I'll take a vote on section 8.1. Shall section 8.1 carry?

Interjection.

The Chair: There are no amendments; you're right. It's the only one, so there's no need for a vote on section 8.1. We'll move to section 8.2. Mr. Jackson, page 34, please.

Mr. Jackson: I've already read this into the record. I move that the bill be amended by adding the following section:

"Compensation

"8.2 The members of a standards development committee shall be compensated for their work on the committee and reimbursed for expenses in relation to that work in an amount to be determined by the Lieutenant Governor in Council."

The Chair: Any debate?

Shall the motion carry?

Ayes

Jackson.

Nays

Craitor, Fonseca, Lean, Ramal, Wynne.

The Chair: The motion does not carry. There's no need to take a vote on 8.2.

We'll move to section 9, pages 35 and 35b.

Mr. Jackson: I move that section 9 of the bill be struck out and the following be substituted:

"Development of proposed standards

"9(1) A standard development committee shall develop proposed accessibility standards in accordance with the process set out in this section.

"Determination of objectives

"(2) Within 90 days after its establishment, a standards development committee shall,

“(a) complete a review of the industry, sector or the economy or class of persons or organizations in relation to which the committee has responsibilities for the purpose of identifying the barriers that affect or exist in the industry, sector or class; and

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“(b) prioritize the identified barriers so as to determine the committee’s objectives and classify the objectives as short-term, mid-term and long-term objectives.

“Short-term objectives

“(3) Within two years of the day a standards development committee is established, the committee shall submit to the minister its first proposed accessibility standard which shall set out the measures, policies, practices and requirements to achieve its short-term objectives.

“Mid-term objectives

“(4) Three years after the standards development committee submitted its first proposed accessibility standard to the minister, and every three years thereafter until the committee is satisfied that it has met its mid-term objectives, the committee shall submit to the minister a proposed accessibility standard which shall set out the measures, policies, practices and requirements to achieve its mid-term objectives in incremental stages.

“Long-term objectives

“(5) On or before January 1, 2024, the standards development committee shall submit to the minister its final proposed accessibility standard which shall set out the measures, policies, practices and requirements to achieve its long-term objectives.

“Extension of timelines

“(6) If the standards development committee believes that it cannot submit a proposed accessibility standard to the minister within the time periods referred to in subsections (3), (4) and (5), the committee may apply to the minister for an extension of the time periods and shall provide reasons for the extension.

“Same

“(7) Upon being satisfied that the need for the extension is reasonable, the minister may grant the standards development committee an extension to submit its proposed accessibility standard within such further time as the minister may specify.

“Earlier proposed standards

“(8) Despite the timelines specified in subsections (3), (4) and (5) for the submission of proposed accessibility standards, the standards development committee may choose to submit proposed accessibility standards to the minister more frequently than is required in those subsections in order to provide for the implementation of measures, policies, practices and requirements over more frequent intervals of time.

“Timelines specified in proposed standards

“(9) A proposed accessibility standard may specify timelines for the implementation of the measures, policies, practices and requirements set out in the standard.

“Majority adoption of proposed standard

“(10) The standards development committee shall not submit a proposed accessibility standard to the minister

unless the proposed accessibility standard has the approval of and bears the signature of the majority of the members of the committee.

“Dissenting report

“(11) A member of the standards development committee or a minority group of members may submit a report to the minister outlining the reasons they have not approved the committee’s proposed accessibility standard and specifying such other recommendations as they see fit to make.”

Very briefly, again, there is this preoccupation amongst the disability community to make sure that there are tighter time frames for the committees to operate once they’ve been chosen.

Secondly, it’s important that progress be measured and reported publicly at all three stages. Clearly—and the minister has alluded to this—post-2024, there will still be ongoing implementation. So it’s important that the legislation speak to short-, mid- and long-term objectives.

The third area of concern is the one where there are dissenting opinions. The minister maintains absolute control of this process, because she and her government can determine exemptions for groups of people, for types of businesses, for individuals, for a whole host of things. However, once the mandate is set—and I’ll take transportation as a good example. Once transportation is set, the presence—and not a majority of the presence now, which has been vetoed—of the membership of a committee will be made up of disabled persons. It is conceivable that the standards being recommended do not satisfy the needs or the wishes of the disability community, or to make matters worse, given that this legislation refuses to embrace the principle of a barrier-free Ontario, fall far short of achieving a public policy objective which is clearly set out in the ADA and is not present in this legislation.

There is some real concern. So the disability community would like to have a window, access to a minority report that exists in the framework,, so they can publicize that to the broader community that they can speak to the public generally.

This simply honours a request made by the ODA committee, in their wisdom, to ensure that the process remains transparent, progressive and on target toward a barrier-free Ontario. That is why I submitted these on behalf of the ODA committee.

The Chair: Any further debate? If there is no debate, then I will now put the question. Shall the motion carry?

Ayes

Jackson.

Nays

Craiton, Fonseca, Leal, Ramal, Wynne.

The Chair: The next one is from the NDP. Since Mr. Marchese is not here, I would suggest that we—

Mr. Jackson: No, I will table it for them. Do you want to stand it down?

The Chair: I would suggest, if you agree, that we stand down anything to do with the NDP until a member shows up. If not, at the end we can deal with them. Would that be OK?

Mr. Jackson: That's fine.

The Chair: So any coming up will be stood down. The next one is page 37, from the government side.

Mr. Ramal: I move that the English version of clause 9(3)(a) of the bill be amended by striking out "to accommodate" at the end and substituting "to address."

That's a technical change.

The Chair: Any comments? Any debate?

Mr. Jackson: Legal counsel might be able to come forward in either quarter to determine the difference. I understand the difference. There is a powerful difference here between setting out guidelines that are destined to accommodate and those that are simply addressed. I don't see it as a technical one; I see it as a substantive amendment. English was a good subject for me.

Ms. Wynne: My understanding is that this amendment corrects a wording mistake, so it makes the language consistent. It's in that sense that it's technical.

The Chair: I appreciate that. Mr. Jackson, though, did ask for a legal opinion on the matter. If we have staff—and we do—could you please answer if that's the case, or whatever it is, so we can move on?

In the meanwhile, Mr. Marchese, we just stood down one item, which was your motion. We can go back to it quickly.

Would staff be able to answer, please?

Mr. David Lillico: As was mentioned earlier, this is just to make the language uniform. It's not meant to change the meaning. There was discussion last week in the committee of the word "accommodate" and the phrase "occupancy of accommodation," which appeared in clause 1 (a) of the bill. As a result of a motion dealt with by the committee last week, that was adjusted to make the language more uniform but without intending to change the meaning. This motion that's being discussed now has the same purpose, to change "accommodate" to "address," just to keep the use of the language consistent.

Mr. Jackson: The question has been answered with respect to the net effect, which is for it to be consistent. If legal counsel is unwilling to admit there's a difference between the word "address" and "accommodate"—I understand what consistency means. It means that the word makes more sense if it's referenced somewhere previously in a bill.

I'm saying that I want to understand if the standards development committees are going to be setting their time frames and taking into account the duty to accommodate, which I understand to be rather clear in legal terms, which is an expression that was first introduced to me by the chief Human Rights Commissioner of the province, and where I have seen in previous Liberal

government legislation dealing with employment equity. So I understand that expression.

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I'm now saying that we're now seeing that that is to be subrogated in favour of "to address," and I consider that a substantive change. I'm not quarrelling with you that the net effect is one of consistency. I just think "to accommodate" puts a clear onus on the standards development committee and their terms of reference and their time frames to achieve a level of a duty to accommodate.

The Chair: Thank you. Any further discussion? If there is no further discussion, we'll now put the question. Shall the motion carry? Those in favour?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

Nays

Jackson.

The Chair: The motion carries.

We will jump section 9. We'll go to section 10, on page 40.

Mr. Jeff Leal (Peterborough): On a point of order, Mr. Chair: I have a government motion that needs to be introduced at this time.

The Chair: Is that under section 9?

Mr. Leal: No; section 10.

Mr. Jackson: On a point of order, Mr. Chair: Does the government have any other amendments today besides the one that Mr. Leal is about to table?

The Chair: Mr. Ramal, do you have an answer to the question?

Mr. Jackson: It's not a tough question.

The Chair: None.

Mr. Jackson: No? That's the last one we're going to see that we haven't been given notice of? Your staff are nodding, saying there's more.

Mr. Ramal: Yes.

Mr. Jackson: Could I ask for a five-minute recess so we can get a copy of those, Mr. Chairman?

Mr. Ramal: We have them.

The Chair: Do we have them here? A five-minute recess has been asked for. We have to have it.

Mr. Jackson: Mr. Chairman, if they can give that to the clerk—this is an open process.

The Chair: So you are flexible?

Mr. Jackson: There are members of the disability community who have come here today and would like a copy of it so that they can offer some comment, and I just think that would be fair. I mean, one or two is fine, but it appears that you've got several that you're—

The Chair: Leave it with me. Mr. Ramal, could you please inform me: Do you have a problem if they are distributed now?

Mr. Ramal: I will provide them.

The Chair: OK. Mr. Marchese, I'll update you. We're going to get all the motions of the government so that everybody knows which other amendments there are. In addition to that, we were going to go to section 10. But because you were not here, under section 9, you've got three motions that you introduced, and we should address them before we move on.

Mr. Leal: This is a section 9 amendment. I'm sorry; I apologize.

The Chair: OK. That's beautiful. I'm going to recognize your amendment now, and then I'll go back to Mr. Marchese's.

Mr. Leal: I just want to make sure that Mr. Jackson and Mr. Marchese have the necessary paperwork.

Mr. Jackson: No, not yet, but it is easier to follow if I've got it in front of me.

The Chair: The clerk is distributing it. Madam Clerk, have you given Mr. Leal's amendment to both Mr. Marchese and Mr. Jackson?

The Clerk of the Committee: We could go back to Mr. Marchese's.

The Chair: Did you give them number 9? Not yet.

So then, can I go back to the normal agenda, which means going back to page 36? In the meantime, the clerk will provide the amendment under section 9 to everybody. I'm going to go back to page 36.

Mr. Marchese, are you ready to move it?

Mr. Rosario Marchese (Trinity-Spadina): Yes. I move that subsection 9(2) of the bill be amended by striking out "January 1, 2025" at the end and substituting "January 1, 2020."

The Chair: Any comments?

Mr. Marchese: Just a couple. I was just trying to find the summary of recommendations for Bill 118, the Accessibility for Ontarians with Disabilities Act, where it lists all the organizations. Here it is: "Determination of Long-Term Objectives." It's just a long list of what people have said:

"Support is given for a 10-year time frame" for organizations.

"Change to a more significant compliance date such as 2009."

"Accessibility standards should be developed by 2020." Six organizations say that.

"The long-term goal date should be moved up to 2015." Two organizations say that.

"Implement standards on or before January 1, 2010." One organization says that.

"Twenty years is a long time in terms of the implementation of public policy." Two organizations say that.

"Twenty years is too long to wait." Many, many say that.

"By the time everyone is made to comply with Bill 118, it will be too late for many people with disabilities to benefit by it." Two organizations say that.

"Shorten the time frame to ensure that time is not lost for those who continue to wait," and so on.

That is just to give you the benefit of the fact that we are not alone in saying this. A whole lot of people are saying that. These are people who came before this committee. These are organizations and people with disabilities saying the time frame is too long. I'm speaking on their behalf and pleading with the government to change that date.

The Chair: Any further debate on the motion?

Mr. Jackson: I've had occasion to think about this amendment for some time, both because my friend in the New Democratic Party told me early on that he was proposing it, and secondly, the disability community. I'm somewhat torn here. The head of the ODA committee, Mr. Lepofsky, has indicated that he's not having any real difficulty with this time frame, so one tends not to want to go offside with anything. In a perfect world, I'm sure he'd love to see it done in 15 years. I'm having concerns about the fact that this is an unusual piece of legislation that's going to have to survive a minimum of five provincial elections. That creates some difficulty.

We had an Ontarians with Disabilities Act with regulations saying that within 10 years ministries will be compliant, and sections of the bill said that a committee, a majority of whom were disabled persons, would create regulations, policies, guidelines and standards. The current minister, in her wisdom, determined that wasn't worthwhile work for the last 18 months. So here you've got a year and a half where the disability community has been preoccupied with consulting with a government—and patting it on the back, quite frankly, and some of that is well deserved—but nothing really has happened with respect to the current legislative infrastructure. I'm concerned about that.

The government is abandoning this notion of a five-year review of this legislation. Five years is historically deemed to try to correspond with changes in governments so that stakeholders have access to the legislation, can actually get their hands on the legislation and work with it and say to a new government that made promises, "These are the changes that didn't occur in the last five years. Here are the changes." That doesn't exist in this bill.

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When you look at all that, the only real empowerment that will drive reforms is if we put pressure on the government in terms of time. As one disabled person said, "If you say 20 years, you'll take 20 years. If you say 15 years, you'll take 15 years."

Mr. Marchese: It was me.

Mr. Jackson: Wise advice.

Mr. Marchese: And the others too.

Mr. Jackson: And from the others.

I'm very concerned that the current Ontarians with Disabilities Act was proclaimed in February 2002. We're now into 2005. The work on standards has been suspended for 18 months. I don't really want to see another government do that with this bill, with the previous bill or with a future bill. In my view, I think it's worthy. I will be supporting the change in the time frame because

we've stripped away many of the instruments that will guarantee an outcome.

I'm very concerned that this legislation is now becoming a negotiation instrument with the citizens of Ontario and not an empowerment instrument that will guarantee the removal of barriers, and will not guarantee the right to accessibility and will not create any vision that determines a barrier-free Ontario. If the current government is re-elected and we're looking at eight or nine years under this framework, they will still have another 15 years left to complete the work.

I would, for a whole lot of reasons that have been troubling me since the first day of the committee hearings that culminated in our clause-by-clause activity—I think it really is worthy of support. I know Mr. Lepofsky won't be offended by my reference, but I think I've appropriately put it into context for him. I'm sure, if he could get this done by 2020, he'd be thrilled. And in no way does that mean he doesn't support it being done by 2020; he just said that wasn't the big issue here. But to Mr. Marchese and myself, I think it has become a big issue.

The Chair: Is there any further debate? I will now put the question.

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.
The next item is page 38.

Mr. Marchese: I move that clause 9(7)(b) of the bill be amended by striking out "on or before January 1, 2025" and substituting "on or before January 20, 2020".

I think the argument has already been made. I'd hate to have a monologue with myself, and with Mr. Jackson. I'm ready for the vote.

The Chair: Is there any further debate from anyone? If there is none, I will put the question.

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.
Page 39.

Mr. Marchese: I move that section 9 of the bill be amended by adding the following subsection:

"Minister's reply

"(9) Within three months after the day the minister receives a proposed accessibility standard from a

standards development committee under subsection (6) or clause (7)(d), the minister shall,

"(a) decide whether to,

"(i) recommend to the Lieutenant Governor in Council that the proposed accessibility standard be adopted by regulation under section 6,

"(ii) recommend to the Lieutenant Governor in Council that the proposed accessibility standard be adopted by regulation under section 6 with such changes as the minister recommends, or

"(iii) return the proposed accessibility standard to the committee for further consideration; and

"(b) advise the committee in writing of its decision.

"Decision made public

"(10) The minister shall make his or her decision and the reasons for the decision available to the public in the prescribed manner."

What this does is make sure that a standard becomes accepted as a regulation; otherwise, it's not law. So we're forcing the minister to actually take a position vis-à-vis the accessibility standards.

Mr. Jackson: I have a question. Can someone who's following along, legally, remind me: Have we approved amendments to this point that indicate that the work of the standards development committee or committees—their recommendations to the minister—will be posted on a Web site and made public, so we'll have that public input prior to the recommendation to cabinet? I know that was an ODAC recommendation. I just want to—

The Chair: Madam Clerk, will you tell me who the best person to answer that question is, please?

Ms. Sibylle Filion: I could suggest, Mr. Jackson, that it's in section 10 of the bill that the proposed accessibility standards get published and there are public comments made on those standards, if that answers your question.

Mr. Jackson: So it's understood that this is prior to her or him going to cabinet.

Ms. Filion: This happens before the regulation gets made, once the proposed standard is submitted to the minister from the standards development committee.

Mr. Jackson: OK. Very good. Thank you.

The Chair: Any further debate on the motion?

Mr. Ramal: Just for the record, basically, on principle, we agree with Mr. Marchese, but we are going to introduce a motion by Mr. Leal later on that will talk about the same principle but with better technical wording. That's it.

Mr. Jackson: Could we be directed to that?

Mr. Ramal: Section 9 of the bill.

Interjection.

The Chair: Yes, it's coming. It's the one we just gave to you, so we're going to deal with it next.

Mr. Jackson: Fair enough, but that means the government is about to defeat this one. I'd like to know which one might be better. That's why I want to read it. I appreciate being directed to it. Is it the one that says, "Minister's response"?

Mr. Leal: Yes.

Mr. Jackson: Just give me a second.

Mr. Marchese: Section 9 of the bill.

Mr. Leal: It started with, “No later than 90 days”—

Mr. Marchese: Sorry. Parliamentary assistant, you’re saying—this motion says, “No later than 90 days after receiving a proposed accessibility standard under subsection (6), the minister shall decide whether to recommend....” You understand that what you’re saying and what we’re saying are two different things, right? This motion says “the minister shall decide.” It leaves it open. It says he or she may decide “whether to recommend to the Lieutenant Governor in Council that the proposed standard be adopted....” My motion says, “recommend to the Lieutenant Governor in Council that the proposed accessibility standard be adopted....”

Mr. Ramal: Same thing. We went to technical and policy writers, and they said the same.

Mr. Marchese: If I can ask the lawyer who is here—legislative counsel, perhaps.

Ms. Filion: I must admit, Mr. Marchese, that your motion in clause (a) says “shall decide whether to recommend.”

Mr. Marchese: It says, “decide whether to recommend to the Lieutenant Governor in Council that the proposed”—

Ms. Filion: If I understood the point.

Mr. Marchese:—“accessibility standard be adopted by regulation under section 6.” OK. And in your view, is the language similar?

Ms. Filion: Very similar.

Mr. Marchese: If they are very similar, why do you think we have a different motion before us? They’re about to move a different motion after they defeat mine. If they’re very similar, why would we be dealing with that?

1630

Ms. Filion: I think you should ask—

Mr. Marchese: Mr. Parliamentary Assistant, if they’re very similar, why are we dealing with it?

Mr. Ramal: Yes, they’re very similar, because this motion has been structured in a way that doesn’t conflict, from a language point of view, with the whole stature of the bill.

Mr. Marchese: It makes no sense. If the lawyer says that they’re very similar—Madam Counsel, legislative counsel, they’re very similar in terms of the effect. Or is there some difference, do you think? Either lawyer.

Ms. Filion: In my view, the government motion—I’ll let Ms. Wynne speak to it.

Mr. Marchese: Any other lawyer?

The Chair: Mr. Marchese did ask that staff provide an answer. I think, if you don’t mind, I prefer that staff attempt to answer and then we can go back to the political party, if they want to comment on it. Could you please provide an answer to the question?

Mr. Lillico: Yes. I think substantively they’re similar and the wording is slightly different.

Mr. Marchese: Sorry. It’s not much different? You’ll have to speak up because I can’t hear you very well.

Mr. Lillico: I think that substantively they’re similar and the wording is slightly different.

The Chair: “Slightly different,” I heard.

Mr. Marchese: You say that one is slightly different. Which one is that, Mr. Legal Counsellor?

Mr. Lillico: Well, the NDP motion has a greater number of subsections than the government supplementary motion.

Mr. Marchese: That’s it?

The Chair: Mr. Marchese, that’s the answer. There are two other people who wish to comment.

Mr. Jackson: Mr. Chairman, as I read this, the only real difference is that the decision by the minister, we’ll say, in this case, is not to proceed with the regulation. Under the government, her written statement would go to the standards committee. Under the NDP, the minister’s written decision would be available to the public in a prescribed manner. That’s the only difference between these two motions.

In my view, the NDP motion suggests that since the meetings of the standards committee are not open and are in camera, and therefore the public doesn’t have access to them, I would hate to think that under the way the government motion is read, a disabled person in this province wanting to know why the government isn’t proceeding with a regulation would have to go and make an application for a freedom of information request in order to get a copy of the minister’s letter. The reason I suggest that it is highly plausible is that, given that we have not seen the terms of reference for the operation of the standards committee, it is quite customary—I know I used to have to sign these documents as a minister—that all persons who participate are sworn to confidentiality and secrecy, that their matters are limited to the minutes of the meeting and not for any commentary and so on and so forth. That’s quite common practice.

If I can be so bold as to suggest, I believe that what the NDP was suggesting and what we have heard during the deputation is, if a standards committee recommends to the government that they do something to change the law in Ontario and the government doesn’t proceed with it, not only should the standards committee be told why their advice isn’t being followed, but the public generally should be informed. I think that is what ODAC asked us, and I think that’s what this amendment recommends. I consider this a different kind of motion, unless the government wishes to admit that was a minor oversight and it was their intention not to keep this information secret, because the way it’s written now, it’s possible that the public will never have access to that written statement.

Mr. Marchese: There are some other differences, having had the opportunity to read their amendment here. We have (a)(iii), which says, “return the proposed accessibility standard to the committee for further consideration,” which isn’t in your motion. So that’s quite different. But (a)(i) and (ii) are similar to your (6.1). It’s all put into one section, which is fine.

“Decision made public,” subsection (10), is very different, in terms of “The minister shall make his or her

decision and the reasons for the decision available to the public....” This is the addition that they took out. And your “Same”—I’m not quite clear—says, “On making a decision under subsection (6.1), the minister shall inform, in writing, the standards development committee that developed the proposed standard in question of his or her decision.”

Can you explain to me what that means, any one of you? Shall inform the standards development committee of what? Does anybody know?

The Chair: Could staff respond?

Mr. Lillico: The subject matter of (6.2) is the minister informing the committee of a decision made under (6.1). The range of possible decisions made under (6.1) is set out in (6.1). It could be a decision on whether or not to recommend that the proposed standard be adopted by regulation, either as it was received from the committee—the entire thing—or part of it, or with other modifications.

Mr. Marchese: But would you agree with me that if you don’t say that, it’s unclear? If you don’t say the minister “shall inform,” dot dot dot, it’s unclear that the minister will inform whomever about whatever?

Mr. Lillico: I’m not sure I’m following that.

Mr. Marchese: Let me go through this: “On making a decision under subsection (6.1), the minister shall inform, in writing, the standards development committee that developed the proposed standard....” Does that make sense to you?

Mr. Lillico: It does to me.

Mr. Marchese: That’s why lawyers get paid the big bucks.

Mr. Lillico: It goes on to say that what the minister would be informing the committee about is the decision. So the minister would—

Mr. Marchese: Where’s the decision in there?

Mr. Lillico: It’s the last word in the subsection.

Mr. Marchese: Shall inform the committee that developed the proposed standard “in question of his or her decision.” I see. OK. I’m telling you.

Mr. Jackson: It’s just to the committee.

Mr. Marchese: I quite agree. That line—written poorly, in my mind—doesn’t say what we’re saying. It’s not quite the same. Yours, in (6.1), speaks to my (a)(i) and (ii), and it omits (iii), the decision should be made public, and yours doesn’t. They’re very different, so I’m glad we sorted that out. We’re ready for the vote, quite clearly.

The Chair: Mr. Jackson has more to add, I believe.

Mr. Jackson: I have a question to Mr. Ramal. Was it your intention here not to be able to report the government’s decision? Because Mr. Marchese’s wording—your wording is tighter. I may not agree with him. I think you’ve accommodated everything, save and except the fact that the minister’s letter may never see the light of day by virtue of the fact that we don’t have the guidelines and the confidentiality requirements for all matters before the committee. In other words, they can just publish their report. Is it your intention that the public not see the reasons for this? That’s the net effect.

Mr. Ramal: Not really. The public is entitled to know whatever is necessary to know. We made it clear before in different motions that results from the committee should be minuted and posted on the Web site.

Mr. Jackson: All right. Obviously, you’re going to defeat this amendment from the NDP.

Mr. Marchese: Do you get that impression?

Mr. Jackson: What I recommend is that when you table your section 9—“no later than 90 days” etc.—I will propose an amendment that’s (6.3). I will add that, and then I’ll give you the opportunity to support your own expression of support. Thank you for that, Mr. Ramal.

The Chair: I guess we’re ready, so let’s take a vote on this amendment. I will now put the question. Shall the motion carry? All those in favour?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Mr. Leal, do you have an addition?

Mr. Leal: I move that section 9 of the bill be amended by adding the following subsection:

“Minister’s response

“(6.1) No later than 90 days after receiving a proposed accessibility standard under subsection (6), the minister shall decide whether to recommend to the Lieutenant Governor in Council that the proposed standard be adopted by regulation under section 6 in whole, in part or with modifications.

“Same

“(6.2) On making a decision under subsection (6.1), the minister shall inform, in writing, the standards development committee that developed the proposed standard in question of his or her decision.”

The Chair: Any debate on the motion?

Mr. Jackson: I would like to propose an amendment to the amendment. I have it right here. I’ve almost got it all written out.

I move that the governing party’s motion be amended by adding a section (6.3) to read:

“The minister shall make his or her decision and the reasons for the decision available to the public in the prescribed manner.”

The Chair: Any debate on (6.3), which is the amendment to the motion?

Mr. Marchese: I just think it’s such an eminently reasonable amendment, and it simply says that the public should have access to that decision. I’m convinced that Liberals want this, I really am. I suspect—

Mr. Jackson: Mr. Ramal is voting for it, we know that.

Mr. Marchese: But I suspect, individually, they would really like to support simple things like this. It’s not that complicated.

The Chair: Thank you.

Mr. Marchese: No, no, I'm not finished. If individual members were given the power, on their own, without being advised by any assistant or the minister's assistant to take a position, they, on their own, would want this. Because there are absolutely no problems that they would have to deal with in making the decision of the minister with respect to this available to the public. I'm sure you agree, Mr. Chair. I know you've got to be neutral, so it's difficult for you.

The Chair: But I'm listening very carefully.

Mr. Marchese: I know; exactly, and those who listen very carefully probably would agree too. If they were given, or had, the free will to be able to do what they wanted, they would probably agree with this amendment. Given that we had this in my proposal, I think this is a reasonable amendment Mr. Jackson makes, and I support it.

The Chair: Any other debate?

Ms. Wynne: Mr. Chair, could I ask for a five-minute recess?

The Chair: Yes. Five minutes are given. We will be back at about 14 minutes to 5.

The committee recessed from 1642 to 1647.

The Chair: Can we all have a seat, please? The quorum is sitting already. The request for five minutes was from you, Ms. Wynne. Do you wish to start the debate, please?

Ms. Wynne: OK. I need to make a point about the drafting of this motion as opposed to the previous one and the reason why we wanted to support this motion. The issue is around our concern about binding cabinet, whether it be the cabinet of this government or future governments.

So I'm wondering if Mr. Jackson would accept an amendment to his amendment so that the language would read, "The minister shall make his or her decision public by whatever means are appropriate."

Mr. Jackson: Which decision are we talking about?

Ms. Wynne: The decision about the standard. The previous part of the motion reads, "On making a decision under subsection (6)(1), the minister shall inform, in writing, the standards development committee;" right? So it's that same decision: The minister shall make his or her decision public by whatever means are appropriate.

Mr. Jackson: Having been the minister responsible for the chief Human Rights Commissioner, he schooled me in the notion that the reasons for a decision are sometimes even more important than the decision itself. Abandoning the reasons, you will simply be compliant by saying, "I am not recommending that motion." Then you will have complied with this section. So the reasons are the powerful instrument.

There will be litigation that will flow from some of these regulations unless, under this legislation and perhaps even the previous one—because this legislation does not offer the guarantee. So there won't be as much litigation flow out of this, but publishing the reasons as to why, I think, is essential. That was the spirit of Mr. Marchese's motion and it's the spirit of mine.

If you wish to defeat it—but you're stating that the decision essentially will be public to a degree. It's the reasons for the decision, and those reasons, as you can well speculate, are that it's too expensive, it doesn't have broad appeal, it doesn't fit within the government's mandate and it would be too much of a compromise of the integrity of the infrastructure. I think the disability community, which has embarked on this journey with the government, has at least the right to know at the end of that journey, if you're going to let go of their hand, why you did.

Ms. Wynne: What I am trying to do is find wording that will allow cabinet to do its job and will not bind cabinet in a way that's not reasonable. That's why I'm suggesting, "The minister shall make his or her decision available to the public in such manner as the minister considers appropriate." That's the language that I would like to see.

Mr. Jackson: You can defeat my amendment, but the fact is, I want the reasons.

Ms. Wynne: I understand, and that's the part that I can't accept.

Mr. Jackson: You don't support that. It doesn't compromise why they're not—you see, the point is, she is giving reasons why she's not recommending it to cabinet. If you were saying to me, "I'd like to have the reasons why I did something in the positive," I might suggest to you that it's a moot point about whether or not you want to explain it. For those who have ever served in cabinet, you get your slides of the presentation, which set out the rationale as to why you are doing something or not doing something. In this instance, let's be mindful that what we're talking about is something that Minister Bountrogianni will not be taking to cabinet. So that is entirely her decision not to take it to cabinet. Therefore, if the accessibility standards committee, we'll say for transportation, recommends, and they're unanimous, that this should happen, and she says, "You know what? I'm not even taking that to cabinet, and here are my reasons," then I think you're presuming that the minister would take it forward, it would get defeated by cabinet and then she has to report that it was defeated by cabinet. That's not what this says. This says if you're not prepared to move it forward—the minister shall decide to take it to cabinet; right? When she decides not to take it to cabinet, the disability community wants to know why won't she take it forward.

I was offered, would I like 20 years for an Ontarians with Disabilities Act. I said no, I won't take it forward. I thought it was too long. If anybody asked me that opinion, I told them. I wasn't required to give it in writing, but because that proposal was never rejected by cabinet, I refused to present it. It's not a protection for cabinet. It's a matter of, if you're not going to recommend it to cabinet, then you're not using cabinet secrecy or in some way compromising cabinet. Cabinet can plead ignorance because they never saw it. But the disability community has the right to know and the members who've been working on regulations for five

years should know why the minister rejected it and didn't even take it to cabinet.

Mr. Marchese: Mr. Jackson has said this quite clearly a few times, for emphasis, I understand. To just agree with him briefly, the reasons are important to us. The fact that the minister makes a decision one way or the other, without explanation, is almost meaningless, really. So their amendment doesn't really help us. I just thought I'd point that out. This is a useful one. The other one, you might as well just not even introduce it.

The Chair: Any further debate on the amendment to the amendment? That's all we've got. If there's no more, then I will now put the question. Shall the motion, as amended, carry?

Ms. Wynne: Sorry. Are we voting on just Mr. Jackson's amendment?

The Chair: Yes, which is (6.3). Those in favour?

The Clerk of the Committee: Wait a minute. What are we voting on?

The Chair: It's (6.3).

The Clerk of the Committee: Just a minute. We're voting on the amendment to the amendment?

The Chair: Yes.

The Clerk of the Committee: Ms. Wynne's?

Interjection: No, we're dealing with his amendment.

The Clerk of the Committee: We're not dealing with hers.

Mr. Marchese: Not with hers, no. She hasn't moved it.

The Clerk of the Committee: Fine. That's what I wanted to know.

The Chair: On (6.3), those in favour?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment to the amendment has been defeated.

There is only the amendment on the floor at this time. I will now put the question to the amendment. Those in favour?

Ms. Wynne: Are we voting on our motion?

The Chair: That is the only one on the floor.

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment carries, with no change.

At this point, we have dealt with section 9, so I will take a vote. Shall section 9, as amended, carry? Those in favour?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 9 carries, as amended.

The next one is section 10, page 40. Mr. Jackson?

Mr. Jackson: I move that section 10 of the bill be struck out and the following substituted:

"Public consultations

"10.(1) In developing a proposed accessibility standard, a standards development committee shall consult with the public, including with persons with disabilities.

"Public meetings

"(2) Every meeting of a standards development committee shall be open to the public unless it is necessary to prevent the public from attending the meeting in order to protect the privacy of an individual or organization.

"Public proposed standards etc.

"(3) Upon receiving a proposed accessibility standard from a standards development committee or a report from a committee member or group of members under subsection 9(11) or a progress report under section 11, the minister shall make the standard or report available to the public by posting it on a government Internet site and by such other means as the minister considers advisable."

The Chair: Any further debate?

Mr. Marchese: This motion is consistent with the Liberal promise made to the public prior to the election, where they spoke loquaciously about issues of openness and transparency. I only mean to support them in this regard. I hope that they wouldn't want to contradict their philosophy of pre-election versus post-election stuff.

So, public consultations, public meetings equal increased openness, increased transparency, which is what McGuinty and so many other Liberals, before they got elected, spoke about, that they were just going to let so many doors open, open so many windows. Transparency was to be the philosophy of the day. This motion assists Liberals in achieving their goal. I would hope that the Liberal members would support this, given that it's their pledge.

Mr. Jackson: It was so prominent an election promise that the ODA Committee assumed it was an oversight in the original draft, and that's why they recommended before this committee on many occasions that these amendments be submitted, and that's why they have been submitted.

1700

Ms. Wynne: I just want to make the point that the way the legislation has been written, the standards development committees are made up of representatives of the public. They are made up of representatives of organizations. They are made up of members of the disability community. What we're trying to do is get the standards in place. The minutes will be posted. What we don't want to do is put in process something that's going to delay the development of standards any further. That's why I won't be voting for this amendment.

Mr. Marchese: I am convinced, given that they have given themselves 20 years to accomplish this, that having a couple of more meetings is not going to delay this process by very much. I could be wrong. It's quite possible that this might delay it to 30 years; I don't know. But I suspect it won't.

I also suspect that if you ask people with disabilities, they will probably agree with me that people with disabilities who would be representing others as members of a standards development committee wouldn't disagree with public consultations and public meetings. I suspect that they would not think it would delay by one day the time frame that you've set for yourselves. Trust me: 20 years is a long time. If they have a couple of meetings, I'm sure they will stay within the time frame.

Please, your arguments are feeble. I'm trying to help you out. This is your stuff. Before the election, you guys wanted to be transparent. Stick with your plan. Don't change it.

Mr. Jackson: One of the reasons for this is something that we all experienced when the original ODA was being proposed. Mr. Leal was a member of a council that voted to make Ontario barrier-free. He passed a motion at Peterborough council calling for all the principles inherent in what the ODAC called for. Municipality after—

Interjection.

Mr. Jackson: This is a fine point.

When I went to see municipalities, they said, "Unless you're going to pay us to do this, we're not doing it." I said, "Why did you do this resolution?" "That's a resolution in principle. We in municipal life are quite accustomed to stating a principle, but that doesn't mean we're committed to it financially." OK. Fine. We all know that AMO pushed back and said, "There's no way. You'll be bankrupting us if you bring in accessibility standards for municipalities."

Mr. Leal is now here in Toronto at Queen's Park and someone well-intentioned has replaced him on Peterborough council. Let's say that that person on Peterborough council now comes and sits on a standards committee. I don't think he's going to be taking the position Mr. Leal does. I think he or she is going to take a position that, "I'm here on behalf of my municipality and we just can't afford to do this." Should that be in a public meeting? If we want to protect municipal politicians who want to say one thing and do another, then we need to protect them. It gets more acute when you're dealing with members of the private sector.

This notion of transparency isn't a footnote like the speeches we're hearing about democratization. This is a real issue of whether or not people are going to be forthright in their level of commitment at the standards development committee, where they are negotiating with other people in the province as to what constitutes an acceptable, financially tolerable standard for access in our province.

I've been harsh. To be fair, there were a few people in municipalities, like Ken Boshcoff in Thunder Bay, like the mayor of Windsor, mayors who made substantive contributions. There were municipalities that were prepared to move toward barrier-free, but there were a lot of municipalities—and I'm not going to name them—that not only were resisting it and saying, "We can't afford it; we're not going to do it," but we've heard before this committee that they were blatantly flaunting the

effectiveness of the accessibility advisory committees in their community.

This isn't just a catch phrase about openness; this is about making sure that people don't get to hide behind closed doors and not come to the clear support of the disability community, that they aren't able to say, "Look, I'm here representing my municipality. My municipality feels that we just can't afford to do this, even over 10 years." I heard it time and time again.

That's the level of transparency that's important here. This is not an empowerment piece of legislation; this is an enabling piece of legislation that negotiates every single detail of accessibility in this province. That is a very marked departure from a government being held accountable to groups of people behind closed doors determining what constitutes accessibility for Mr. and Mrs. Smith's developmentally disabled child in London, Ontario.

That's what the difference is, and that is a huge difference—not a small one, not a subtle one, but a very huge distinction about how this legislation will be played out over the next 20 years.

The Chair: I will now put the question: Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment doesn't carry.

Therefore, I will ask for a vote on section 10. Shall section 10 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 10 carries.

Now we are on section 11. Is there a new amendment to section 11?

Ms. Wynne: Yes, there is.

The Chair: OK. Who has it? Ms. Wynne? Go ahead. Section 11, the new—

Mr. Jackson: Mr. Chairman, could I suggest we do the practice of numbering these pages? I'm going to number mine 40A. Is that OK with everybody?

The Chair: Yes. Under section 11, I would say 40A is fine.

Mr. Jackson: Thank you. Then I know what I'm dealing with.

Ms. Wynne: I move that section 11 of the bill be amended by adding the following subsection:

"Progress reports made public

"(2) Upon receiving a report under subsection (1), the minister shall make it available to the public by posting it

on a government Internet site and by such other means as the minister considers advisable.”

The Chair: Any comments?

Ms. Wynne: This is actually in response to the call to make progress reports public. So we're attempting to meet the spirit of that.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Jackson, Leal, Ramal, Wynne.

The Chair: The motion is carried.

Therefore, we'll vote on section 11, as amended. Shall section 11, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 11, as amended, is carried.

Now we're on section 11.1, and it's page 41.

Mr. Jackson: I move that the bill be amended by adding the following section:

“Adoption of proposed standards by regulation

“11.1 Where a standards development committee submits a proposed accessibility standard to the minister under section 9, the minister shall, within 120 days of receipt of the proposed accessibility standard,

“(a) submit the proposed accessibility standard to the Lieutenant Governor in Council for adoption by regulation under section 6 with no changes or with such changes as the minister may recommend;

“(b) return the proposed accessibility standard to the standards development committee for further consideration for such reasons as the minister may specify and require the committee to submit a further proposed accessibility standard at such time as the minister may specify.”

1710

One of the more compelling presentations we received was from the deaf and deaf-blind community. They fought very hard and vigorously for legislation, which is now many years old and to this day there are still no regulations. Although I attempted to include that in this legislation, legal counsel has advised me that it is a very awkward and difficult thing to force the government to bring forward regulations in a bill that has already passed. I accept that legal advice. However, I am interested in the political pathology of leaving the impression that we're acting on something when we don't proclaim the regulations. Members are quite familiar with my concern that the penalties section of the ODA was never proclaimed by the new minister and that the other aspects of that bill aren't proclaimed.

In my view, you need this kind of prescriptive approach which says that once you've been to cabinet, you must proceed with your regs. and you must get on

with the business of getting them done so they don't sit in limbo. There is real potential in this legislation to do that. I don't think that's really intended, but it does preserve the flexibility for this and future cabinets to say, “That's all well and good; you've done your job, Minister, you've recommended it to us.” I can remember some items that had been sitting on cabinet tables for as long as eight years, and we had to look at them.

I'll leave it at that. But there is no end to the things that get referred to cabinet for decisions, and I was shocked at how many things can languish there. This is one that I think we shouldn't allow to. It does guide the minister and the government more directly, but I think that's why we've gone through this whole exercise and why I strongly recommend that we consider adoption of proposed standards by regulation, so that they are gazetted and the expectations are out there.

The Human Rights Commissioner will tell you that if you haven't told the public, it's pretty hard for them to know that there are rights that they have. The effective regulation is that they are then gazetted and copies are in every library. I'm telling people here in the room something they know, but for people who are watching these proceedings, that's an important distinction to understand: the power of the Ontario gazettes. Every lawyer gets them and they then know those are rights you now have and they are now the law of our province.

I've said all I want to say on this. I urge the members to follow the ODAC recommendation accordingly.

Mr. Marchese: For the record, I just wanted to say that I appreciate what Mr. Jackson is saying. He has had experience with his own bill, Bill 125, and he speaks from that experience. He's trying to prevent this government from doing what happened to him in his government. My suspicion is that the Liberal members of this committee think it won't happen to them, but it will. I'd wager anything on that—it will. I know they're all well-intentioned. They mean well and they hope this won't happen to them. Only people who have had government experience can tell you that. That's why I appreciated Mr. Jackson's clarity and comments on this.

I suspect the Liberal members in this committee will defeat it, but the purpose of this is to make sure that governments proceed with regulations that have been passed.

There's a time frame. The 120 days is a reasonable time frame. It says to the government, “Once you've done this, you've got to proceed.” I think it's a reasonable time frame. Obviously, governments don't want to be bound, and that's the kind of legal advice you would be getting from staff: “You don't want to bind yourself, Minister, just in case.” We understand that.

I just thought I'd offer this advice to the Liberal members, knowing full well they're about to defeat this motion.

The Chair: I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craiton, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment does not carry. Therefore, I'll take a vote on section 11.1—we don't need to take an overall because there are no amendments.

We'll move on to section 12 and page 42. Mr. Marchese, it's yours.

Mr. Marchese: I move that section 12 of the bill be struck out and the following substituted:

"Assistance for standards development committees

"12. The standards development committee may retain, appoint or request experts to provide advice to a standards development committee."

For the benefit of those who are following this debate, the current section says, "The minister may retain, appoint or request experts to provide advice to a standards development committee."

The difference to those who are following this is very obvious. If we leave it to the minister who "may retain, appoint or request experts to provide advice to a standards development committee," it may not happen. That's just the way it is. If we allow the standards development committee the power to, "may retain, appoint or request experts to provide advice to a standards development committee," then something might happen.

The point is obvious. It's the standards development committee that does the work and they know what expertise they require. They shouldn't have to rely on the power of the minister to make this happen. The committee shouldn't have to plead with the minister, "Please, we need some help in this regard." We should allow the committees to judiciously act on this based on their expertise and knowledge about what they know and what they don't. If they don't know enough and require expertise, they should be empowered to do so.

It says "may." It uses the same language. It doesn't mean the standards development committee is being prescribed or proscribed or that they've been told they must. It says they "may" if they need the expertise, but you're leaving that power in the hands of the standards development committee and not the minister.

Mr. Leal: Just briefly, you're making the assumption that the minister, he or she, is not a hands-on minister and is not consulting with the standards development committees during the development of the process. That's an assumption you're making. I would assume something else, that a minister would be consulting with these committees. If the committee says, "We need Mr. Marchese because he's an expert in the engineering of such a building," then the minister would respond to that kind of request.

Mr. Marchese: Quite right. There are a couple of things. First, you never know whether that same minister

will be there. You may have full confidence in this one. You never know how long ministers stay in their portfolios. They tend to rotate a fair bit for different reasons. So you may have a hands-on person and you may not. You may even have a hands-on person who might decide, "We can't afford it." It could be a question of money, possibly. I don't know. All I'm saying is, if you empower the standards development committee to have the ability to do something, they will get the work done much faster and with greater ease. They shouldn't have to plead or beg.

The Chair: Is there any further debate?

Mr. Jackson: To be fair, although I understand the point my colleague Mr. Marchese has presented, I think the minister is required to strike a budget every year that governs what these people can spend. Although I've participated in the amendments to sort of define what was being spent, in the back of all that I realize that the minister has to go before Management Board and get the money. There's a distinction between those things I'm trying to influence that are cost items that I think the legislation should contain and those which give the minister flexibility.

1720

After all, the minister isn't consulting as to the first two or three or four subcommittees that are going to be done. That's out of the legislation. She gets to choose that. The onus should be put on her to make sure that it's done properly. I don't think it's critical. I think the current legislation says she has the right to do that. Therefore, it's under that legislation that she would be empowered to go back to Management Board and say, "You know what? We've hit the wall on transportation, because we've got a report that said it's going to be \$850 million to make our subway system in Toronto accessible. I need to bring in an expert from Seattle who found a way of doing it for half the money." I think that's something—yes, the committee will know it, but if they've got to spend \$30,000 or \$40,000 to bring in this expert, then I think the minister should be able to budget that.

I was concerned if it wasn't in the legislation. It recognized, for those of us who have worked in this field, that you're not going to survive without getting some outside consulting assistance in some of these areas. Some of those people will be unwilling to do it for either no compensation or \$75 a day or whatever the minister is ultimately going to come up with. These people are not going to be prepared to give up that amount of work if they're not compensated. That's the reality out there. So I'll support—

The Chair: The amendment?

Mr. Jackson: No, I am not going to support the amendment, because I think the current one in this instance is more than adequate and, frankly, the minister has to go get the money in order to do it. You can't have a committee saying, "We need these 12 consultants," and then her whole budget is gone.

The Chair: Any further comments? If not, I will now put the question. Shall the motion carry?

Ayes

Marchese.

Nays

Craitor, Fonseca, Jackson, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one is page 43 and 43a.

Mr. Jackson: These are not numbered correctly, so if people could follow through with me and mark their page, it would be helpful and I would appreciate it.

I move that section 12 of the bill be struck out and the following substituted:

“Accessibility standards adviser

“12(1) There shall be appointed, as an officer of the Legislative Assembly, an accessibility standards adviser for the purposes of this act and the regulations.

“Appointment

“(2) The accessibility standards adviser shall be appointed by the Lieutenant Governor in Council on the address of the assembly.

“Term of office

“(3) The accessibility standards adviser shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the assembly.

“Nature of employment

“(4) The accessibility standards adviser shall devote himself or herself exclusively to the duties of the accessibility standards adviser's office and shall not hold any other office under the crown or engage in any other employment.

“Non-application

“(5) The Public Service Act does not apply to the accessibility standards adviser.

“Salary

“(6) The accessibility standards adviser shall be paid a salary to be fixed by the Lieutenant Governor in Council.

“Functions

“(7) The functions of the accessibility standards adviser are,

“(a) to advise the minister on the establishment of standards development committees;

“(b) to assist the standards development committees in the development of proposed accessibility standards by various means including providing the committees with technical support and retaining experts and technical advisers when required by the committees;

“(c) to monitor the implementation of this act and of the accessibility standards and the work of the standards development committees; and

“(d) to carry out such other responsibilities as may be provided under this act.”

“Report

“(8) The accessibility standards adviser shall every year prepare a report on the development of accessibility standards and the implementation of this act and shall submit the report to the minister and make the report available to the public in accordance with the regulations.”

I thank the committee for its patience in the way I had to amend my amendment.

The Chair: Mr. Jackson, am I correct that what you did was to eliminate (3) and (4), and renumber—

Mr. Jackson: I modified number (3).

The Chair: Sorry, number (3) was modified.

Mr. Jackson: Number (4) was removed, and I've renumbered it accordingly.

The Chair: OK, that's fine. Any comments?

Mr. Jackson: Briefly. This issue was raised by David Lepofsky in his presentation by the ODAC committee and by several other organizations too numerous to mention at the moment. They were trying to advise the government and this committee that somehow we need an independent—reference was made to a disabilities Ombudsman, in effect. The models that currently exist in the province are ones that the government is currently struggling with in terms of the Environmental Commissioner. That Environmental Commissioner is at arm's-length. They report annually. There are several examples. So the disability community is asking us, as legislators, to put that into the legislation. They do that for a lot of good reasons.

The role of the Accessibility Standards Advisory Council has been somewhat watered down in relation to the gains they made in the Ontarians with Disabilities Act, Bill 125, where that council had real power and authority and had the ability to report independently. Those rights that the disability community won are being removed in this legislation and modified to the extent that the council will be sort of a forum to which the minister can refer items. Nowhere in this legislation do we have the role of an independent watchdog—a terrible word, I know, but it explains to our viewers who are watching and listening today that those are the kinds of protections and enforcements that are required. This is done on matters of a serious nature in our province. Our province has a long history of it, because we had the first Human Rights Commissioner—arm's length—the first Environmental Commissioner—arm's length—the first Ombudsman in North America—arm's length—and the list goes on.

There is a rich history in our province of recognizing that our democracy changes its policy perspective from time to time. In particular, this legislation, because it's not prescriptive—I keep repeating it, but it's a huge distinction between the two legislations. This does not set out requirements; it sets out a negotiated instrument, and nowhere do we have an independent body. I'm sure David Lepofsky and the ODAC would like to get on with their lives and do all sorts of other things and not devote a lifetime to becoming the unpaid watchdogs of this

legislation. Therefore they genuinely and honestly approached the government to set out what they felt was a reasonable request to protect the disability community. It would be non-partisan, it would have its own budget, it would report independently, in much the same way as the auditor does today.

Those are the reasons I tabled it. I thought it was a legitimate request. In jurisdictions in the United States that have moved in the direction of prescriptive legislation, there wasn't the presence of this. Where there was a regimen set up—in parts of Australia, in a couple of countries in Europe—where there was this negotiated outcome, they had to have a third party, because the government has a vested interest because it is going to be called upon to pay a lot of bills.

1730

For that reason, the direction and shift to this bill is going more toward that negotiated outcome. I think we need someone, independently, to speak to the people of Ontario on whether we are or are not making progress over the next 20-some years.

The Chair: Any further debate? I will now put the question.

Mr. Marchese: I was just waiting for some Liberal to speak.

Here's why I support this motion. Section 12 says for the standards development committee, "The minister may retain, appoint or request experts." I argue that the minister may or may not. In some cases, I suspect he or she may not; in some cases, he or she may. The expertise may be sufficient or it may not, but it will rely on the minister to decide who they appoint.

The point of having an accessibility standards adviser is that this person would be seen to be independent of the minister, which in my view is a good thing. You don't want the public to think that the people you're appointing to give whatever expertise have any kind of political influence rather than the kind of support that the committees require.

In the same way that the standards development committee may retain, appoint or request experts, as I indicated in my amendment—the one you defeated. In the same way that involves cost, this involves cost, too. This is up front, and the other one is not, but they both involve money. However you pay for this expertise, it's money.

I am as supportive of this motion as I was of mine. It's an important technical support position to put in place, because I think the standards development committee is going to need it. It's good for the government to have such a position, it's good for the public, it's good for transparency and openness and it's good for accountability, by the way. I know the Liberals pride themselves on wanting to be transparent and accountable. They may want to consider this position as something that fits into their philosophy.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.
Shall section 12 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 12 carries with no amendments.
Section 12.1, Mr. Marchese, page 44.

Mr. Marchese: I move that the bill be amended by adding the following section:

"Compensation

"12.1 The members of a standards development committee shall be compensated for their work on the committee and reimbursed for expenses in relation to that work in an amount to be determined by the Lieutenant Governor in Council."

I refer the members to this report: Summary of Recommendations: Bill 118, the Accessibility for Ontarians with Disabilities Act, 2004, page 43. A whole number of people spoke to this issue: "To encourage the participation of the disabled, we recommend that expenses be reimbursed and honorariums that do not jeopardize their ODSP or pension plans be considered for those that participate on these committees or offer their expertise in any consultations." Two organizations said that: BFCAC and PUSH-NWO.

"[T]o ensure the participation of persons with disabilities on SDCs and any other committees, stipulate in the bill that there will be financial support for individuals and organizations participating in this process": OFL, SCDLC, TBDLC and OPSEU-DRC. These are acronyms; they don't have the full name of these groups.

"Provide individuals with disabilities with financial compensation for their expenses related to work on the SDCs": ETFO, YSSTAB, QUOUAE, NFB-OG and AS.

"Financial resources for disabled persons organizations could come from the 'special fund' established under s. 40(2)(h)"—

Interjection.

The Chair: Just one moment, please. Mr. Ramal?

Mr. Ramal: On a point of order, Mr. Speaker: We debated this motion a long time ago.

Mr. Fonseca: Section 8.

Mr. Ramal: Yes, section 8.

The Chair: Is that what staff is trying to figure out? Let me make sure that staff agrees, and then I will make a decision on the matter. Is Mr. Ramal correct, Madam Clerk?

The Clerk of the Committee: If it has already been moved and defeated—

Ms. Filion: Mr. Jackson's motion, which is number 34, was, in substance and word-for-word, the same as this motion, in fact.

The Chair: Mr. Marchese, therefore there is no purpose for debating this item since it has been addressed. Any comments from you, Mr. Marchese?

Mr. Marchese: I just wanted to say that the list goes on and on. What the Liberal members of this committee rejected was the advice of countless people and organizations. Since the Liberals have already defeated a similar motion, I will withdraw mine.

The Chair: I would ask with the highest respect that the best thing to do next time is just to remove it, staying away from comments. There's lots of space for comments later on. Thanks very much, though.

So this has been removed, and we'll move on. There is no vote to be taken under section 12; therefore we'll go down—well, for section 13, there is no amendment. We'll take a vote on section 13. Shall section 13 carry?

Ayes

Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? None opposed. So section 13 carries.

Section 14: First is page 45.

Mr. Jackson: Thank you—

The Chair: I'm sorry; just one moment. Mr. Leal, on section 14?

Mr. Leal: On a short point of order, Mr. Chair: We did make an amendment back in section 8 that dealt with compensation for members that would be serving on the committee, and I'd be remiss if I didn't get that on the record. So I'll leave it at that.

Mr. Jackson: Mr. Chairman, you've allowed the comment, and I think the distinction that you've missed is the reasonable expenses.

The Chair: Is that the word, "reasonable"?

Mr. Jackson: No, you've not passed expenses. You've said the minister may deal with an honorarium.

Ms. Wynne: And expenses. Read the amendment.

Mr. Jackson: All right.

The Chair: OK, so we cleared the air. Can we move on, please? Mr. Jackson, you still have the floor, under page 45.

Mr. Jackson: I move that subsection 14(4) of the bill be struck out and the following substituted:

"Content

"(4) Within the prescribed period after this section comes into force, the accessibility standards adviser shall make recommendations to the minister as to the information that should be included in an accessibility report made under this section.

"Guidelines

"(5) Within the prescribed period after receiving the recommendations of the accessibility standards adviser, the minister shall prepare guidelines as to the information that is to be included in an accessibility report and may,

in so doing, adopt in whole or in part the recommendations of the accessibility standards adviser.

"Guidelines made public

"(6) The minister shall make the guidelines prepared under subsection (5) available to the public in the prescribed manner.

"Compliance with guidelines

"(7) Every person or organization that is required to prepare an accessibility report under this section shall comply with the guidelines prepared by the minister under subsection (5)."

Self-explanatory, Mr. Chairman.

1740

The Chair: Any further debate on the amendment?

Mr. Marchese: Even though the Liberals defeated the possibility of having an accessibility standards adviser, should there have been one, the motion says that the minister should include recommendations as to the information that should be included in the accessibility report made under the section. Under "Guidelines," "the minister shall prepare guidelines as to the information that is to be included in an accessibility report and may, in so doing, adopt in whole or in part the recommendations of the accessibility standards adviser."

I'm just trying to comment on these recommendations by removing the standards adviser, Mr. Jackson, as a way of showing that what you are adding to this section is very useful and important and that without the information that you're trying to put in there, the recommendation that's currently there will be weak. I will be supporting it.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry? All those in favour?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next one is you again, Mr. Jackson: 46 and 46(a).

Interjection.

Mr. Jackson: Hope springs eternal. I didn't want to presume that they would defeat the motion, but I prepared something that strengthens section 14 but doesn't necessarily acknowledge an independent body. Therefore, I move that subsection 14(4) of the bill be struck out and the following substituted:

"Content

"(4) An accessibility report shall contain such information as may be prescribed or required by the guidelines prepared by the minister under subsection (6).

"Consultation

"(5) Within the prescribed period after this section comes into force, the minister shall consult with prescribed persons with respect to the information that

should be included in an accessibility report in addition to any information that is prescribed by regulation.

“Guidelines

“(6) After completing the consultation under subsection (5), the minister shall prepare guidelines as to the information that is to be included in an accessibility report in addition to any information that is prescribed by regulation.

“Guidelines made public

“(7) The minister shall make the guidelines prepared under subsection (6) available to the public in the prescribed manner.

“Compliance with guidelines

“(8) Every person or organization that is required to prepare an accessibility report under this section shall comply with the guidelines prepared by the minister under subsection (6).”

One of the things this new bill does is it retains the accessibility reports that were required of municipalities. We heard, when the minister failed to bring in the penalties section for municipalities that weren't co-operating—and there were quite a few; I understand that now over 75% of the municipalities in the province have stopped doing accessibility reports—that we have to get that back on track.

The work the ministry was doing before it was suspended 18 months ago was to set those standards and guidelines. They were not put in the new legislation. I feel very strongly that they should be. As I say, some of the best examples in our province are coming from municipalities and some of our most disappointing results are coming from municipalities. The members of the disability community spoke to this committee rather co-gently about which ones they were. It's not helpful to go over who they were. It's sufficient to say that there are municipalities that just really don't care about the previous bill, and there may be some that don't care about this one. I think it's a powerful instrument. It was something that disabled persons fought long and hard to get, and they would like to make sure that they are able to impact the removal of barriers in their communities through any of these accessibility committees and reports that are coming out, either municipally or otherwise. So thank you, and I would hope that this has the support of the government.

Mr. Marchese: I support this motion; it's very clean and clear. When I look at what's already in section 14, it reads: “A person or organization to whom an accessibility standard applies shall file an accessibility report with a director annually....” Then, it says in section 14(2), “A person or organization shall make an accessibility report filed under subsection (1) available to the public,” and 14(3) says, “An accessibility report shall be in the form approved by the minister and the minister may require that the report or a part of the report be provided electronically in a format approved by the minister.”

What Mr. Jackson adds is not there, in the section that I read. Why is this important? It's important because many of the groups that came to speak to us and offer

advice, because we asked for their advice, spoke to this. I believe this is a reasonable amendment that we should be listening to. It speaks to consultation. I remind you that you've got 20 years. Within that 20 years, you could hold a couple of meetings and it won't hold this up too much.

It says: “Within the prescribed period after this section comes into force, the minister shall consult with prescribed persons with respect to the information that should be included in an accessibility report....” That's all it says. I don't think we'll bog ourselves down if we have a meeting with people to talk about what information should be included in an accessibility report.

Secondly, it speaks of guidelines. “After completing the consultation under subsection (5),” of which I just spoke, “the minister shall prepare guidelines as to the information that is to be included in an accessibility report....” It speaks of guidelines. So we meet with the public—don't hold this report back any longer than 20 years—and we establish guidelines as to what those accessibility reports should be, and then we make those guidelines public. That's the extent of this amendment. I'm telling you, it's not serious. It won't bring your government down. It won't slow down your report, because we've already got 20 years. I just urge some flexibility on the members of this committee to say: “This is not so bad. Marchese thinks this is a good amendment.”

The Chair: Any further debate? I will now put the question.

Shall the motion carry?

The clerk isn't here. I can do it.

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

Mr. Marchese: I feel exactly like Sisyphus—you recall him? Pushing the rock up that mountain?

1750

Interjection.

The Chair: Yes, I did already. Therefore, I'm going to take your vote on the entire section. There is no change.

The Clerk of the Committee: Do you know what the result is?

The Chair: It was two in favour, and the other five opposed. I'm satisfied. If you don't have a problem, we can now move on.

Shall section 14 carry? There were no amendments approved.

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 14 carries with no changes. We'll go to section 15. Mr. Ramal, page 47.

Mr. Ramal: Clause 15(1)(b) of the bill: I move that the French version of clause 15(1)(b) of the bill be amended by striking out “un dirigeant” and substituting “un cadre dirigeant.”

The Chair: Any debate?

Mr. Marchese: I’m going to support it, Mr. Chair.

The Chair: I’m happy to hear it. Any comments from anyone? None?

I will now put the question.

Ayes

Craitor, Fonseca, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: I’m very happy to see that everybody supported it. The amendment is carried.

Shall section 15, as amended, carry? Those in favour?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Carried.

The Clerk of the Committee: We can do 16 and 17 together.

The Chair: OK. We’ll do them together. Sections 16 and 17: There are no amendments. Shall sections 16 and 17 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Both carried.

We’ll go to section 18. Mr. Marchese, page 48, please.

Mr. Marchese: I move that subsection 18(1) be struck out and the following substituted:

“(1) The minister shall appoint inspectors for the purposes of this act before the first accessibility standard is established under section 6.”

Section 18, at the moment, reads: “The minister may appoint inspectors for the purposes of this act.”

I refer you to this document again. It’s called the summary of recommendations, Bill 118, Accessibility for Ontarians with Disabilities Act.

Here’s what a number of people had to say:

“There needs to be more specific detail about how the bill will be administered. How many inspectors will there be for each sector or industry?” AAC said that.

“Create a short-term time frame for the hiring of inspectors. (CNIB)

“Ensure that inspectors are appointed at the appropriate time to ensure effective and timely compliance with accessibility standards. (MSSC, MSSC-N)

“The government should publicly commit to a proper number of inspectors to ensure that the legislation is enforced. (CAW)

“This should state that the minister ‘shall’ appoint inspectors. The powers and duties are defined in detail, and inspectors would seem to be essential to the success of the bill. (MSS-O, MSSC-L)

“Provide that the minister shall appoint inspectors beginning at the time the initial accessibility standards are enacted. (OFL, YUFA, ARCH, TBDIWSG, SCDLC, NFB/AE, CHS-H)

“Give priority to selecting disabled persons as trained inspectors,” which I found very intriguing, by the way. I was very supportive of that. Three organizations said that: YUFA, AAC, RH&CB.

“Rather than the minister appointing a new set of inspectors whose sole responsibility is the enforcement of the accessibility standards, consider utilizing existing building inspectors....

“Give careful consideration to the circumstances under which an inspector is able to enter a clinical environment where care is being conducted without the consent of patients. (OHA)

“Inspectors should be provincially appointed. (NF)”

Anyway, I was just trying to make a point. A whole number of people said that the way the act is written—“the minister may appoint inspectors for the purposes of this act”—is weak. It does not give us assurances that proper enforcement will happen.

If we say what I am saying, then people with disabilities are given assurances that this Liberal caucus and this Liberal government are serious about enforcement. You are not serious if you don’t say this. If your language is “may appoint inspectors,” you’re not serious about making sure enforcement happens. I think that if you don’t pass this, it will be another defeat for people with disabilities—myself included, of course.

Mr. Ramal: Just to comment on Mr. Marchese: I believe that without the established accessibility standards, it would be premature to talk about the inspectors.

Also, the government is putting a motion to talk to the same point. I think that it’s in subsection 18(1), when we talk about, “The deputy minister shall appoint one or more inspectors for the purpose of this act.” So we talk about what you mentioned, Mr. Marchese. We consider your point. Therefore, we are going to talk about it when we get to the motion on subsection 18(1). Hopefully, your concern will be eliminated when we’ve reached that point.

In terms of the inspector, it would be premature to start appointing an inspector before you have the standards. It would be impossible to determine how many—maybe one or two or maybe five or 10—before that; it would be very difficult.

Ms. Wynne: Just to follow up on my colleague, our motion on page 50 does exactly what Mr. Ramal laid out and addresses the issue that Mr. Marchese has raised.

Mr. Jackson: I tend to agree with the point that appointing them prior to the regs might be premature and perhaps an unnecessary expense. Of course, my amendment that follows sort of says that.

I am, however, concerned about this whole notion of how we're going to do the inspection of this process. I'm almost speaking to the government motion, but they've already stated for the record that they'll defeat this and my motion because they think they have a better one. So I think it's important that we at least—because I may not submit mine, but amend the government motion.

My concern is simply this: When we received our briefing from the government, they indicated that they didn't feel it might be necessary to have inspectors, that there are elevator inspectors in the province now doing elevator inspections, that municipalities have building inspectors.

Municipalities that have spoken to us as a committee have said, "Whoa. Hold the phone here. We don't want this to be another form of downloading, that this is now an additional process," that they're going to have a new expense. ODAC has said, "Wait a minute. How can they really inspect themselves if it's municipal inspectors inspecting municipal buildings?" I've had one very bad experience with nursing homes over the years, where an inspector was in conflict with his employer, a fire marshal's office.

I'm a little concerned about this. So although I can see that this will be defeated, and I'm sure that mine will be defeated, I'm worried that the deputy minister will be in compliance with this act by appointing one inspector for the province. The purpose of that one inspector is to coordinate the regulations we have yet to see. We won't be able to see ones in this kind of detail. So it would be unfair to say that we should see it now. But that regulation could simply say that municipalities are responsible for these inspections, school boards are responsible for these inspections or hospitals are responsible for these inspections. Clearly, the disability community cautioned us about that.

Someone will hopefully explain why we've gone from the minister to the deputy minister, but that's not of great a concern to me. I think that the legislation should clearly set out an expectation that inspectors—plural—will be appointed. "One or more" means that the compliance with this legislation is that they can appoint one person to be an inspector for the entire province—17 million-plus people—and somehow that will satisfy it.

So I've stated that for the record. This one will be defeated. I won't submit mine, but I will amend the government one, if time will allow us.

The Chair: Mr. Marchese, the last comments.

Mr. Marchese: Just to finish up, the reason why I prefer my motion to the government's motion—at least it says they "shall" appoint an inspector, which is better than what they had—so that's good—and they listened in part to this. The reason why their motion is not helpful—and they specifically say "one or more." The reason why

they say "one or more" is because of what Mr. Jackson said. If they hire one, they've accomplished their goal: They're compliant with their motion. But if you leave it that they "shall appoint inspectors," it's different. They know that and Marchese knows that, right? That's why they have "one or more." That's why Marchese is against their amendment being written in this way.

Secondly, the reason why Marchese is moving this amendment, saying, "Before the first accessibility standard," is for this reason: clearly written up in their amendment, which says that they will appoint "one inspector or more" after the regulations within a reasonable time. In government terms, "reasonable time" could be a 20-year time frame. You understand what I'm saying? That's what that problem is all about.

If you're developing an accessibility standard and you know that, then my motion says that the minister, knowing this, will appoint inspectors, because you know what's coming up, right, and you'll know how many you need. My motion is very clean, very clear and it forces the government to act. It doesn't say "one inspector"; it says "inspectors," and it says "before," not "after" a reasonable time, meaning a 20-year time frame.

I'm ready for the vote.

The Chair: I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craiton, Fonseca, Leal, Ramal, Wynne.

The Chair: The amendment does not carry.

Mr. Jackson, do you want to do item 49, to remove it, as you indicated, and we'll start at 50?

Mr. Jackson: Yes, let's proceed to the government motion.

The Chair: It's already 6.

Mr. Jackson: Oh, it's 6. All right.

The Chair: Do you wish to remove it?

Mr. Jackson: Leave it, then. You've been advised that it's 6 of the clock.

The Chair: OK. So we'll end this evening having dealt with page 48. We'll start at page 49 next Monday.

I would suggest that you may want to plan next Monday and Tuesday in your agendas, if possible, for continuing this debate—at least next Monday and Tuesday. Thank you. Goodnight.

The committee adjourned at 1802.

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**Legislative Assembly
of Ontario**

First Session, 38th Parliament



**Assemblée législative
de l'Ontario**

Première session, 38^e législature

**Official Report
of Debates
(Hansard)**

Monday 11 April 2005

**Journal
des débats
(Hansard)**

Lundi 11 avril 2005

**Standing committee on
social policy**

**Accessibility for Ontarians with
Disabilities Act, 2005**

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 11 April 2005

Lundi 11 avril 2005

*The committee met at 1535 in room 151.*ACCESSIBILITY FOR ONTARIANS WITH
DISABILITIES ACT, 2005LOI DE 2005 SUR L'ACCESSIBILITÉ
POUR LES PERSONNES HANDICAPÉES
DE L'ONTARIO

Consideration of Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities / Projet de loi 118, Loi traitant de l'élaboration, de la mise en oeuvre et de l'application de normes concernant l'accessibilité pour les personnes handicapées en ce qui concerne les biens, les services, les installations, l'emploi, le logement, les bâtiments et toutes les autres choses qu'elle précise.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome to the meeting of the standing committee on social policy in consideration of Bill 118, the Accessibility for Ontarians with Disabilities Act.

Once again, I would like to point out several features that we hope help to improve accessibility for those who are participating in and attending meetings regarding Bill 118. In addition to our French-language interpretation, we will be providing, at each of our meetings, closed captioning, sign language interpreters, and two support services attendants, who will be coming shortly, to provide assistance to anyone who wishes it. They will please identify themselves for the audience.

The meeting today will be broadcast on the parliamentary channel, available on cable TV tomorrow at 10 a.m., and it will be rebroadcast on Friday, April 15. Also, the Webcast broadcast of this meeting will be available tomorrow at the same time as the television broadcast on the Legislative Assembly Web site at www.ontla.on.ca.

Members please note that a package of additional amendments tabled by the government party last week has been distributed with page numbers in the upper right-hand corner to assist you in placing them in your existing packages in the proper order.

We will now resume our clause-by-clause consideration of Bill 118. We left off at the last meeting considering amendments to section 18. The next motion, in

order, is the official opposition motion to amend subsection 18(1) on page 49 in your package. Mr. Jackson, you will proceed whenever you're ready.

Mr. Cameron Jackson (Burlington): What page?

The Chair: Page 49.

Mr. Khalil Ramal (London-Fanshawe): I guess, before we move to Mr. Jackson—page 50.

The Chair: I will double-check with the clerk, but my records indicate that 49 was not finalized.

Ms. Kathleen O. Wynne (Don Valley West): I believe it was withdrawn.

Mr. Rosario Marchese (Trinity-Spadina): I think we dealt with my motion, which was on the issue of inspectors.

The Chair: So we need a motion to address 49.

Mr. Marchese: I think we're now on page 49, because we dealt with my motion on 48, not his.

The Chair: That's exactly what I asked. I don't understand what the confusion is.

Mr. Marchese: There is some confusion.

The Chair: I made it very clear that we're dealing with page 49 and that the floor goes to Mr. Jackson. When he is ready, he will put a motion, and if there are any comments, I will be happy to hear from anyone.

Mr. Marchese: I'm with the Chair.

The Chair: I'm happy to hear that, Rosario.

Mr. Jackson: I move that subsection 18(1) of the bill be struck out and the following substituted:

"Inspectors

"18.(1) Within a prescribed time after the first accessibility standard is established under section 6, the minister shall appoint inspectors for the purposes of this act."

Briefly, I have put on the record my concern about "one or more," and that is only used in the context that any future government will be compliant with the law if it appoints one inspector. I find it hard to believe that we'll try to manage this process for the entire province without making a commitment to a significant number of inspectors, and "within a reasonable time," which is contained in the government motion, I don't think is as strong as "within a prescribed time," which means it would find its way into the regulations and the public would know about it.

We've had several groups come before the committee expressing concern and expectations for the government to move forward in the past, and they have not happened, so in my view, legislation that says "within a reasonable

time" is far too subjective and open-ended, but "a prescribed time" to have the inspectors appointed tightens the language and gets us moving in a more timely fashion.

1540

Those are my comments. I would hope that the members will support this friendly amendment.

Mr. Marchese: I support this motion because it's similar to mine, which was on page 48. The only difference is that I was saying we should hire the inspectors before the first accessibility standard, and the reason for that is that at least we will guarantee that inspectors will be hired before the first accessibility standard is done. Mr. Jackson's motion is that "within a prescribed time after the first accessibility standard is established," inspectors should be hired.

Since my motion failed, I now agree with Mr. Jackson's motion as a second-best alternative to deal with this issue, because this motion speaks about "inspectors," unlike the government motion that we are going to be dealing with later which says "one or more"—and I will speak to that when they introduce it.

I think this is part of what many groups demanded from us and expect in the manner of the government, so I will be supporting this motion.

Mr. Ramal: We spoke about this issue for a long time last week, and I'd repeat what we said. I believe the government is going to propose an amendment to this section to replace "may appoint" with "shall appoint." We talk about "a reasonable time" only to give the minister flexibility to appoint the inspector after they have appointed the standards committee.

I have no further comments.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry. We move to page 50.

Mr. Ramal: I move that subsection 18(1) of the bill be struck out and the following substituted:

"Inspectors

"18.(1) The deputy minister shall appoint one or more inspectors for the purpose of this act and the regulations within a reasonable time after the first accessibility standard is established under section 6."

The Chair: Any further debate?

Mr. Jackson: I would move an amendment to delete "one or more" from this amendment. I've stated ad nauseam that I can't imagine us running the whole province with just one inspector.

The Chair: Can we deal with the amendment to the amendment, please?

Mr. Marchese: I'll just stick to the amendment for now, and then I'll speak to the main motion in a second.

It's very clear both to Mr. Jackson and myself, and it's probably clear to the government as well, what this motion means. "The deputy minister shall appoint one or more inspectors"—they know exactly what this says. If they hire one inspector, it means that they are in conformance with this motion. If they do not hire more than one inspector, that's OK. The way it's written, that's what this motion says. It is my sense that the government members understand this. If they don't, we have a problem on our hands. If they do understand it, I'm not sure why they would accept it as a good motion, in all fairness.

Having one inspector to do this big job simply is unacceptable, and it's not what people told us during the hearings. I think this amendment is very, very appropriate, and all I can do is appeal to the members for reasonable judgment on this.

The Chair: Mr. Ramal, and then Ms. Wynne.

Mr. Ramal: We talked about this issue several times, and I'll repeat it again. "One or more" doesn't mean we're not going to use other inspectors from different agencies to inspect all the sectors. As you know, since we got elected as a government, we've hired more than 200 inspectors in both the Ministry of Labour and the Ministry of Agriculture and Food. So we can use all of these inspectors to serve our goal to assist us to strengthen Bill 118 and monitor the sectors to comply with this bill.

Ms. Wynne: I just want to make the point that throughout the hearings what we heard about this section was that people wanted to be sure that the government was going to hire inspectors. So the word "may" changing to "shall" was what people were really looking for. This motion leaves some flexibility for the deputy minister to appoint inspectors as they're needed, but it demands that there be inspectors appointed, and that is what delegates asked us to do.

Mr. Marchese: I just want to refute the arguments by both members who have just spoken. As to the latter, it is true that they went from "may" to "shall," but the language says "appoint one or more." If they wanted the language of "appoint as needed," they would have accepted the language of the amendment, which was, "shall appoint inspectors." That would appropriately deal with the comments Ms. Wynne has just made to the effect of "appoint as needed." So while I agree with the terminology change of "may" to "shall," if they really mean what they say, they should accept the friendly amendment; otherwise, they don't mean what they say.

To the parliamentary assistant, he says that it doesn't mean that other inspectors will not be used. This motion doesn't speak to that. This motion is very specific, but as it relates to other inspectors, he would know—and if he doesn't, it worries me; it worries me if they don't know—that all the inspectors we use in every other

sector are overburdened with the work they're doing and overused in terms of the work they are doing at the moment. So when they claim that other inspectors can be used, I don't think it's a fair comment to make, given the fact that we don't have enough inspectors at the moment and the ones we do have are overburdened with the work they're doing. Third, they're not being trained or have the training to be able to do this particular job, and this motion doesn't speak to that at all.

Their responses to this amendment are feeble and inadequate. They know it.

Mr. Jackson: I have a further concern, and it will surface when the government moves its motion on page 51, and that is, without explanation, the moving from a minister to a deputy minister. It's my understanding that the disability community has a minister with a secretariat but they do not have a deputy minister. So my question would be, in which ministry will we find a deputy minister responsible for the disability file? Do you follow, Mr. Ramal? Do you understand that I'm getting at?

The secretariat does not have a deputy minister running it. They have assistant deputy ministers, but they don't have a full-blown deputy; that only is reserved for front-line ministries. So I'm a little concerned, because future governments can decide maybe that's the issue here, but in the original legislation that I tabled we envisaged a permanent ministerial commitment to have the secretariat, and therefore the minister was responsible; in other words that minister with that secretariat. If that minister moves around, the responsibility still goes with them. My worry here is that we're starting this off by not having the responsibility go with the minister, but an ADM or a deputy minister who is assigned to that responsibility.

Unless I'm missing something here—and I don't think I am—I'd like to know why we've switched from minister to deputy minister, when the disability community does not have a deputy minister. I mean, it's possible you could transfer this whole thing over to income support in Comsoc or you could move it to children's services. That would be my concern.

The Chair: I would ask everyone to stay on the amendment to the amendment, please. If we can do this, we can get through the issue on 51 and so on.

Mr. Jackson: I apologize. You're right, I should have—

The Chair: No problem. You've made your comments. That's fair.

Any further debate on the amendment to the amendment? If there is none, I will now put the question: Shall the amendment to the amendment carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment to the amendment does not carry.

We still have the original amendment, 18(1), from the government side. I heard some comments. I'll go back to Mr. Marchese for additional comments.

1550

Mr. Marchese: Forget the comments on this motion. My amendment speaks of, "The minister shall appoint inspectors before the first accessibility standard." Mr. Jackson's motion had language that said "within a prescribed time after the first accessibility standard is established," then inspectors would be hired. What they've got by way of language is "within a reasonable time."

Mr. Jackson: After.

Mr. Marchese: And then "after," which I already debated. There's no point in repeating it.

The problem of "reasonable time" is that it has no limits. It's not boxed in; it's not prescribed. "Reasonable time" could be anything, and in government, as you know because you've been around for a while, "reasonable time" could be—we haven't sent this issue to committee in six months, then all of a sudden we send it, and that's within "reasonable time." If they had introduced it a year later, they would have said, "That's within a reasonable time." You know what I'm getting at.

The problem with "reasonable time" is that it's got an elastic kind of time frame, so you could just stretch that elastic as long as you want. You understand "reasonable time," right? That's why Marchese was supporting his own motion. That's why, in part, I was supporting Mr. Jackson's motion, because it had "prescribed time" connected to the hiring of these inspectors, and that's why I'm opposed to this language. It simply says the government may or may not hire them today, maybe not tomorrow, but sometime, whatever is "reasonable" as defined by the Liberal government of the day.

I'm opposed to this wording. I'm opposed to the language. I just don't like it.

The Chair: Is there any further debate?

Mr. Jackson: I'd ask a question. This is the first time this surfaces. In the next amendment, you ask to specifically change the wording. But you are striking out the minister's responsibility to pick inspectors and putting in the deputy minister. Could we get an answer to that? Because I am quite confident that my statements are accurate in terms of the legal intent here.

Mr. Ramal: Mr. Jackson, can we wait until we move to page 51 and then we can deal with it?

Mr. Jackson: No. This is a very serious issue. Do you know what? The Chair might rule out—since you've already referred to the responsibility of the deputy minister and deleted the minister, one might reasonably argue that, in conforming to the legal points, once we've done that, item 51 is unnecessary.

Ms. Wynne: Mr. Chair—

The Chair: It's up to you if you wish to answer or not. There's also staff here.

Ms. Wynne: I'd just like to make a brief statement in response—and I'm sure Mr. Jackson knows this. What this would ensure is that the inspectors would be civil servants and so would not be political appointments in that sense. They'd be civil servants.

Mr. Ramal: To satisfy Mr. Jackson, we can ask ministry staff to ask the technical—

The Chair: Yes. Would you please take a seat and answer the question.

Mr. Ramal: Through you, Mr. Chair, to Mr. Jackson: I wonder if Mr. Jackson is going to combine 50 and 51 in order to get both answers from ministry staff.

Mr. Jackson: There will be no need to repeat the question.

The Chair: Staff, did you hear the question? Do you wish Mr. Jackson to repeat the question?

Ms. Katherine Hewson: Yes, please.

The Chair: Would you please, Mr. Jackson? The lady there would like to hear your question.

Mr. Jackson: Do want me to repeat it?

Ms. Hewson: Just the question, if you would.

Mr. Jackson: All right. When you drafted the original Bill 118 and sent it out, you had in your original bill, and I'm looking at it, "The minister may appoint inspectors for the purposes of this act." The only thing we heard, from the ODA Committee and others, was, "Don't change it, except to appoint them earlier, and make sure it's mandatory." That's what we heard. We never heard anybody say that we shouldn't have the minister holding on to responsibility here.

Some of us are concerned, and I'm sure the ODA Committee is concerned, that we're taking the responsibility away from the minister and putting it in the hands of a deputy minister. In this instance, the secretariat is not managed by a deputy minister; it has ADMs, unless things have changed.

Ms. Hewson: The rationale for the change is that it is intended that inspectors could be civil servants and therefore it is more appropriate for a deputy minister to appoint, given that they would be appointments from the Ontario public service.

In respect to the question regarding who is responsible in the ministry, ultimately, for the accessibility directorate, there is a deputy minister who is responsible. At present, it's the Deputy Minister of Citizenship.

Mr. Jackson: Precisely, and if disability issues get moved to another ministry, we're going to have a different deputy referenced here, as opposed to—I think we really want the minister to continue to maintain the commitment. It was envisaged by your draftspersons in your consultation process, with ODAC support. Now, all of a sudden, we're changing it at the 11th hour. I'm just having real difficulty with that.

Ms. Hewson: Maybe I could also draw your attention to the definition of "minister" under this bill, which is, "the Minister of Citizenship and Immigration or whatever other member of the executive council to whom the administration of this act is assigned under the Executive

Council Act," so the deputy minister would be the deputy minister under that minister.

Mr. Jackson: I understand that, but I kind of like tying it to a minister specifically. This minister is a very active minister. She has a lot of things on her plate, as you well know, and the point is, tying it to the minister's responsibility is what we've done. But I sense that the Liberals have their marching orders and I'm wasting my time.

The Chair: Mr. Jackson, thank you for your comments. Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Marchese.

The Chair: The motion carries.

Page 51; Mr. Ramal.

Mr. Ramal: I move that subsection 18(2) of the bill be amended by striking out "The minister" at the beginning and substituting "The deputy minister."

I think the same analogy applies as in motion 50, for the same reason, because the deputy ministers are civil servants. This amendment has been brought to give them more flexibility to deal with an inspector, in order to strengthen the bill and make it more flexible.

The Chair: Is there any further debate? There is none. I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion carries.

We have dealt with section 18. Therefore, I will take a vote. Shall 18, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Section 18 carries.

We'll go to section 19. There is no change. Shall section 19 carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Section 19 carries.

Section 20: There is an amendment.

Mr. Ramal: I move that subsection 20(1) of the bill be amended by striking out "or" at the end of clause (a) and substituting "and".

The Chair: Any comments?

Mr. Ramal: The technical amendment clarifies that a justice of the peace could issue a search warrant if he or she feels the need for it if people are not complying with the bill. It's to give the bill more flexibility, and also the current wording in the bill would only require the justice of the peace to be satisfied by one condition instead of both. That's why we came up with this amendment, in order to match the technicalities and not to interfere with the justice of the peace.

1600

The Chair: Is there any further debate?

Mr. Marchese: I agree with the government on this. They were smart to have seen that problem.

The Chair: Any other comments? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: The amendment carries.

That is the only amendment, so I will take a vote on section 20. Shall section 20, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Wynne.

The Chair: Section 20 carries.

Section 21, page 53; Mr. Ramal.

Mr. Ramal: I move that subsection 21(5) of the bill be struck out and the following substituted:

"Failure to comply with previous order

"(5) If a person or organization fails to comply with an order made under subsection (3) or (4) within the time specified in the order and no appeal of the order is made within the time specified in subsection 27(1), a director may, subject to subsection (6), make an order requiring the person or organization to pay an administrative penalty in accordance with the regulations."

I think this motion is clear, to specify that the director can now penalize organizations or people who are not going to comply with the regulations in the bill.

The Chair: Any further debate?

Mr. Marchese: A question to the parliamentary assistant or anyone else: Is there a reason why, if there's a failure to comply, you wouldn't use the words "a director shall"? What's your logic?

Mr. Ramal: The ministry staff know the wording better than I. Maybe they wish to—

The Chair: Would staff answer, please?

Ms. Hewson: It's regular language that is used, because in some cases the director might not make an order. For example, there may be some discussion with the person against whom the order is made. So this leaves it open for some alternative—

Mr. Marchese: And that's regular language that we generally use in a lot of these? So in these cases, there

would be a lot of discretion that can be part of this. They may charge or they may not, and that's the way we want to leave it, basically, is that it? Because we don't really want to force them to pay a penalty, do we?

Ms. Hewson: In most cases, we probably do want to force them to pay a penalty, but there may be some circumstances in which it may not be appropriate.

Mr. Marchese: And we want to be nice, don't we?

The Chair: Of course. Mr. Jackson.

Mr. Jackson: It strikes me a bit odd, if I'm reading this section correctly, and I believe I am. You have all this work going into inspecting a property. A report is done, an order is given, and then there's non-compliance with that order, so people go back in. Then there's an appeal. The person then appeals. Inspectors go back in. The state puts up the money to have an appeal procedure. Then at the end of all this, there's still non-compliance, and they come to this magical clause in the legislation that says, "You know, at the end of all this, they may actually charge you a fine." I'm not being overly sensitive when people say, "You didn't have any teeth," but are we going to gum these people to death for not being compliant? I really think—

Mr. Marchese: They do the appeal and make their arguments, but even beyond that, we have to be nice to them.

Mr. Jackson: I think you send a stronger message that at the end of all this process, there is going to be a fine. Sure, there are always extenuating circumstances. Frankly, I'm still deeply offended by that judge in St. Catharines who subverted the current law of this province and said, "Do you know what? There are lots of other disabled parking spots out there. This man's fine shouldn't be at the legal limit, as prescribed by the province of Ontario. We'll knock it back all we want." Honestly, I really think the disability community has expected that at the end of the day, non-compliance will result in a fine.

Let's be mindful that the reason a person is in an appeal position is because a disabled person was wronged by the failure to comply. They have complained, which means it has been brought to the state's attention, and still nothing is happening. In a small community, where this is the only service in that community for anybody, let alone the disabled, these are serious matters.

It doesn't look like the government is going to strengthen this section. We're not saying there is a penalty, in the first instance, of non-compliance. We're saying, "After you've been in non-compliance and you've exhausted your appeals, we've had enough. There is going to be a penalty." I've stated it. I just think it's a little too soft.

Mr. Jeff Leal (Peterborough): As I recall, there were a couple of presentations made. One was made by Ms. Maxwell, who is executive director of the Canadian Federation of Independent Business, plus a group of individuals—I'm starting to learn the geography of Toronto—and it's the Yonge Street or Bloor Street business corridor, either one of those.

Mr. Marchese: Yorkville.

The Chair: Which is Bloor, I would think.

Mr. Leal: Thanks. If I recall correctly, one of the things they expressed to us was the need for increased clarity with regard to responsibilities for both people and businesses. It seems to me that this amendment adds to that clarity and identifies the legal obligations of both individuals and those businesses from this Bill 118. In fact, Mr. Jackson makes a point, that in many small communities across Ontario—Havelock, for example, in my riding—there may be one or two small businesses, and Ms. Maxwell certainly represents that group. I think that in this particular case, by adding clarity, it would be helpful to those communities where there are small businesses. I think this is a reasonable amendment from that basis.

Ms. Wynne: I just want to clarify my understanding of why we're putting this amendment forward, and that is to clarify the time. One of the things we heard in the hearings was that people wanted more clarity and a tightening or clarifying of time frames. This amendment specifies a time. You have to look at the amendment under section 27 that we're putting forward, which is on page 63, to recognize that what we're saying is that an order can be appealed "by filing a notice of appeal with the tribunal within 15 days after the day the order is made." So we're specifying a time period in which this is to happen. That is the purpose of the amendment.

The amendment we've put forward, Mr. Jackson, refers to subsection 27(1) of the bill. We're putting forward an amendment, on page 63 of your motions, which would specify a time period of 15 days, in which time a notice of appeal has to be filed after the day the order is made. That's actually the intention of this amendment. I don't know if staff would like to clarify the difference between an administrative penalty and any other kind of penalty. Could we have that clarified?

Ms. Hewson: Maybe that is something that would be helpful. This section is saying that the director may make an order requiring someone to pay an administrative penalty. You'll see more information in the regulation-making section about administrative penalties. But I think it is important to point out as well that that is in addition or different than the offence provision which already exists, which is section 38, which specifies that, "A person is guilty of an offence who,

"(b) fails to comply with any order made by a director or tribunal under this act."

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So that is an offence, and that's different than through the administrative penalty that the director has discretion over.

Ms. Wynne: So this is a procedural or administrative issue, as opposed to an offence on a standard?

Ms. Hewson: That's correct, and this bill includes both.

Ms. Wynne: OK. Thank you.

Mr. Marchese: Just a very quick comment. What we do remember is that under the previous bill in 2001, the

enforcement provision around the fine provision was never proclaimed, so they couldn't levy any fines.

I appreciate that we didn't do that in the last bill, but this language around "may" is just as weak, because it's like not doing anything. So you've got an enforcement provision that never gets proclaimed, and in this particular instance you do have a provision that says a director "may." Even after an appeal, they may decide not to charge them a penalty fee. It's just as weak as not proclaiming any enforcement provision, is my argument around this language of "may," in spite of what the other members have spoken to generally about this section.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Marchese.

The Chair: The motion carries.

The next one is page 54; Mr. Jackson.

Mr. Jackson: I move that clause 21(7)(b) of the bill be amended by striking out "and" at the end of subclause (i) and adding the following subclause:

"(i.1) inform the person or organization of what must be done in order to satisfy the order, and"

The Chair: Any comments, Mr. Jackson?

Mr. Jackson: No.

The Chair: Any debate? Mr. Ramal, and Mr. Marchese after.

Mr. Ramal: We have no problem accepting this motion if Mr. Jackson is willing to change "satisfy" to "comply" because we believe "comply" meshes with all the language being used in the bill.

Mr. Marchese: How would that read?

Mr. Jackson: "Comply with."

The Chair: It would change the word "satisfy" to the word "comply."

Mr. Jackson: Mr. Chairman, I'll reread it into the record.

I would move that the amendment read:

"(i.1) inform the person or organization of what must be done in order to comply with the order, and"

The Chair: So basically there's only one motion, what you just read on the floor, and the word "comply" is in it. Therefore, Mr. Marchese or anyone, do you have any debate?

Mr. Marchese: I'm happy that the government has accepted this amendment. We're making some real progress. We're near the end of it and, boy, are we doing well, eh, Mr. Jackson? The committee seems very happy with that. I think the addition of the word "comply" instead of "satisfy" is a much better term. I agree with the parliamentary assistant; I think it's great.

The Chair: Is there any further debate on the motion? I will now put the question.

Ayes

Arnott, Fonseca, Jackson, Marchese, Parsons, Ramal, Wynne.

The Chair: Everybody supports this amendment.

The next one is page 54a; Mr. Ramal.

Mr. Ramal: I move that clause 21(7)(c) of the bill be amended by striking out “and specify the time for giving notice of appeal” at the end and substituting “within 15 days after the day the order is made.”

This amendment, just to set the timetable for appeals, complies with the bill. We’ve been talking about it for a long time. So this one is a motion to set the timetable—

The Chair: Mr. Ramal, I’m sorry. Are you on page 54A? I think you are on 55. We need to deal with 54a—

Mr. Ramal: I’m sorry.

The Chair: It’s not on our agenda.

Mr. Ramal: So we don’t have to deal with it because we’ve already accepted the motion—

The Chair: So there is no 54a. We are on 55. You’re right. Continue, Mr. Ramal.

Mr. Ramal: This amendment talks about setting up the timetable for appeals and compliance. It’s been asked many times that we set a timetable, and we set it here: 15 days. I think it’s very clear. This motion, this amendment is to clarify all the debate that has been said for a long time.

The Chair: Any comments? I will put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Marchese, Parsons, Ramal, Wynne.

The Chair: Everybody supports it. The motion carries.

Therefore, we’ll take a vote on section 21. Shall section 21, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

We’ll go to section 22. There is one amendment, 55a.

Mr. Ramal: I don’t have it.

The Chair: I will provide you with a page, Mr. Ramal.

Mr. Ramal: I move that subsection 22(2) of the bill be amended by adding the following clause:

“(a.i) of the steps that the person or organization must take in order to comply with the order;”

There is more specification in this amendment, to specify the steps and the timetable that should be taken in order to comply with the order.

The Chair: If there are no comments, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Unanimous again. Thank you.

Now we will take a vote on this section. Shall section 22, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 23.

Mr. Ramal: I move that subsection 23(1) of the bill be amended by striking out “and no appeal of the order is made within the time specified in the order” and substituting “and no appeal of the order is made within the time specified in subsection 27(1).”

We’re still dealing with the same issue in order to clarify the steps that should be taken in appeal and compliance.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Supported by all.

Next is page 57.

Mr. Ramal: I move that subsection 23(4) of the bill be amended by striking out “within the time specified in the order” and substituting “within the time specified in subsection 27(1).”

For the same reason, we amended this section.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Leal, Marchese, Parsons, Ramal, Wynne.

The Chair: Supported by all.

We will take a vote on section 23. Shall section 23, as amended, carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 24: There is no adjustment. I’ll take a vote. Shall section 24 carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None.

Section 25: Page 58.

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Mr. Ramal: I move that section 25 of the bill be struck out, and the following substituted:

"Order received, etc.

"25. Within a reasonable time after making an order under section 21, a director may review the order and vary or rescind it."

This amendment is to qualify the job and the power of the director in order to make a decision in this issue. I believe it must be done within a reasonable time, as specified in the bill. The director is in charge of the implementation of the bill, and also to monitor the steps going forward to achieve implementation of Bill 118.

The Chair: Is there any further debate?

Mr. Marchese: Just to remind the parliamentary assistant that during the hearings, many deputants spoke to the use of the word "may" here. I certainly did, and many others did as well. All I want to tell him is that enforcement is weakened by the use of the word "may," or, put differently, enforcement is not strengthened by the use of the word "may." You either have enforcement, which makes sense, and then you enforce it by language that says "a director shall review the order and vary or rescind it," or it means nothing. The addition of "within a reasonable time" doesn't change the weakness of the word "may." So the problem with "within a reasonable time," which I argued earlier, is that it has an elastic terminology which means nothing in government and is of no use to me, and the word "may" means that we may or may not have any review of this at all.

Obviously, I'm not going to be able to convince him because this amendment is in the form that it is here, but I'm certainly opposed to "may," and many deputants were as well. I point that out for the record so that the Liberal members remember that.

Mr. Ramal: To clarify what Mr. Marchese said, we say "may" because we don't want different sectors—different sectors vary—and different requirements, and every sector has its own conditions. That's why we've been saying "may" instead of "shall," and if the ministry staff have any further comment on it, I would like them to comment.

Mr. Jackson: I read something a little different into this. We have a section of this bill which speaks to the issue that the minister can exempt whole groups and classes of individuals from coverage. We now have a section which talks about an order; and an order, as we understand it, is an order made under the act for compliance, to change something to make it more accessible. In this specific one, we are now talking about a director who may, by order, vary or revoke an order. So now you've got a civil servant who is modifying an order that's already been done, and they "may" be able to do it.

I find the whole section awkward because if there are going to be exemptions, then somebody had better be honest and up-front and say, "These are the exemptions." I'd be very disappointed to see us create a system where we aren't going to talk about exemptions. We're going to make groups go through this whole process and then, at

the end of the process, say, "OK, there's an order. You're not in compliance? Do you know what? Don't worry about it. Our director can vary your order and we can modify it. And don't even worry about that, because we could even revoke it," according to this section. I'm having a bit of a hard time with that, because this is the escape clause, where the director can undo something that flows from regulations that were negotiated with the disability community. The minister, in her wisdom, is able to say, "Those people in the Bloor business section who have restaurants four steps down are completely exempt." That's essentially the kind of exemption she's going to be making. At the end of all that, we still have the means by which you can vary or revoke an order, so it doesn't really speak to it tightly.

I hear what Mr. Marchese said about "may" and "shall." Frankly, I don't want it to say "shall" because it says, "They shall revoke an order." I don't want orders to be revoked. You've taken up that much of the bureaucrats' time, all the inspectors at city hall, you've negotiated, you've hired a lawyer, you've been in there, you've fought it, you've done an appeal, and then at the end of all that, within a reasonable time after making an order under section 20, a director, meaning the civil servant, may review the order and vary or rescind it.

Obviously we're not going to get this changed, but I have no illusions. This is the second major clause you can drive a truck through, and I'm not terribly thrilled about those things, and certainly not after people who are well-intentioned come to the table and work for a year to get an order varied, and at the end of the day the director can pick up the phone and say, "Do you know what? These people aren't really a hardship case. According to the legislation, you have the right to review it, vary it or rescind it." That's it. It doesn't say who reviews the work of the director. It just says they have omnipotent power to do it.

I've certainly commented enough, Mr. Chairman. Thank you for giving me that time.

Mr. Marchese: I just want to thank Mr. Jackson for his comments. I think he's perfectly correct. I was speaking to subsection 21(3) in terms of a compliance order, reporting of requirements. I'm speaking to a whole different section, I think, which is not before us. I should have commented on it earlier. It would be, just to correct myself, 21(3),

"If a director concludes that a person or organization has contravened section 14 or 17, the director may, by order, require the person or organization to do any or all of the following:

"1. File an accessibility report...."

My comments fit more properly there and not where I just made the arguments. I want to correct myself and speak against a section that we've already gone through and agreed to.

The Chair: No problem. Thank you for the clarification.

Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Leal, Parsons, Ramal, Wynne.

Nays

Jackson, Marchese.

The Chair: The motion carries.

Now we'll take care of the motion on the section. Shall section 25, as amended, carry?

Ayes

Leal, Parsons, Ramal, Wynne.

The Chair: The section carries.

We go to section 26, pages 59 and 59a.

Mr. Marchese: I move that section 26 of the bill be struck out and the following substituted:

"Tribunal

"26. (1) There is hereby established a tribunal to be known as the Accessibility Appeals Tribunal in English and Tribunal d'appel en matière d'accessibilité in French.

"Composition

"(2) The tribunal shall be composed of such members as may be appointed by the Lieutenant Governor in Council.

"Chair, vice-chair

"(3) The Lieutenant Governor in Council shall appoint a chair and may appoint one or more vice-chairs of the tribunal from among the members of the tribunal.

"Remuneration

"(4) The members of the tribunal shall be paid such allowances and expenses as are fixed by the Lieutenant Governor in Council.

"Employees

"(5) Such employees as are considered necessary for the proper conduct of the tribunal may be appointed under the Public Service Act.

"Rules

"(6) The tribunal may make rules regulating its practice and procedure and generally for the conduct and management of its affairs and such rules are not regulations within the meaning of the Regulations Act.

"Panels

"(7) The chair of the tribunal may appoint panels composed of one or more members of the tribunal to hold hearings in the place of the full tribunal wherever the tribunal is required to hold a hearing under this act and, where a panel holds a hearing, the panel has all the powers and duties, except the power referred to in subsection (6), given to the tribunal under this act.

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"Powers and duties

"(8) The tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

The section simply replaces the current provisions that allow for multiple tribunals at some point in the in-

definite future with a single tribunal to be established immediately. We think this is more effective and many of the deputants called for this as well. It's better than what the government is proposing, in my view.

The Chair: Any further debate on the amendment?

Mr. Jackson: I just want to reinforce that I too came away from the public hearings quite convinced that this was essential, so I will be supporting Mr. Marchese's motion. I have a similar one, but mine isn't as fulsome as Mr. Marchese's, so I will definitely yield to his better wordsmithing and tell him that I will support it for the same reasons.

Mr. Ramal: I believe that setting up another tribunal will duplicate the services and add more expense. Also, I would say that people with disabilities are already covered under the discrimination legislation and also under the Human Rights Code. So we are protecting them, and they have the right and ability to complain and send their complaint to the Human Rights Commission.

Plus, we believe the duplication in terms of a new tribunal would be a waste of time and effort and also a waste of money. If we can focus our efforts on one tribunal in order to achieve our goal, then settling complaints will be a lot better. Also, the director would not be the person who would be appearing before the tribunal to defend the case.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

I'll move to page 60, section 26. Mr. Jackson, it's your section.

Mr. Jackson: I move that section 26 of the bill be struck out and the following substituted:

"Tribunal

"26. (1) Within a prescribed time after the first accessibility standard is established under section 6, the Lieutenant Governor in Council shall,

"(a) establish a tribunal to be known as the Ontario Disability Accessibility Tribunal in English and Tribunal en matière d'accessibilité pour personnes handicapées in French; or

"(b) designate a tribunal with expertise in matters relating to accessibility for persons with disabilities to act as the tribunal for the purposes of this act.

"Composition

"(2) If a new tribunal is established under clause (1)(a), the composition of the tribunal and the procedures and practices of the tribunal shall comply with the requirements prescribed by regulation.

"Powers and duties

"(3) The tribunal may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

In tabling this motion, I will reiterate what Mr. Marchese said. We have no real assurances about the size and magnitude of this tribunal. To make matters worse, we're led to believe that there could be multiple tribunals. To me, that's awkward because it speaks to two issues that are of concern to me: One is by definition the part-time nature of its work and, second, the lack of continuity that can occur between the various sectors.

One of the first revelations for me years ago as a minister was how poorly sensitized people in responsibilities were, whether it was at the municipal level, the college level, the hospital level or so on. It never left me that the more you can reinforce the skill set of people in quasi-judicial authority, the better off the people who are seeking to have their lives changed for the better, which is the whole purpose of doing this bill.

Continuity is very important to that. It's bad enough that we don't have continuity in governments, we don't have continuity in ministers and, Lord knows, we don't even have continuity in the professional civil service. At least we have an opportunity here, in setting up the tribunals, to ensure that there's some degree of consistency. I'm tired of hearing this idea that "We're behind on our tribunals because we're down to four members, and it's going to take us eight months to train the next new people," etc.

I'm not a big fan of multiple tribunals, because they end up being part-time, and somebody who's off doing very important work in their life has to say, "You know what? I can't make it." "Yes, but you're our expert on transit. You are the best person in our province." "Sorry, it's a part-time appointment. Find somebody else."

I'm reinforcing what's said. The Conservative Party amendments are less detailed, and I would rather have accepted Mr. Marchese's. I was a little disappointed—not disappointed. It's more fair to say that I was a little confused at the parliamentary assistant's response to this, saying that one tribunal will be too much work. Please help me understand why we don't want to make a commitment to a single tribunal that will deal with these expeditiously.

Mr. Ramal: At the present time, as you know, Mr. Jackson, we have so many tribunals in areas like employment, law, the building code, transportation etc. You can see in our amendment on page 61 that we're going to move a motion to amend that section in order to allow the creation of a tribunal after we establish the standards. Before that, I think it would be premature to move on and do it. We can leave it in the hands of the tribunals which already exist in many different areas. That's what I mean.

The Chair: I want to recognize Ms. Wynne if it's to do with the question. Otherwise, I'll go back to Mr. Jackson.

Ms. Wynne: It's to do with the amendment

The Chair: Let me deal with Mr. Jackson, and then I'll come back to you.

Mr. Jackson: Mine varies slightly from the previous one: "within a prescribed time after the first accessibility standard is established" is essentially the point you made.

Mr. Ramal: That's correct.

Mr. Jackson: I guess what I'm trying to get at is that we don't want multiple tribunals, which currently exist in this legislation; we feel that there should be one. It's almost like having multiple human rights commissions.

You go to one commission, you have a specialty in that area and they deal with your ruling. That's kind of what we were trying to achieve here. This is after the work of the standards committee is completed, people aren't happy with the consensus and the government's regulations, and they want to appeal them. That's why I think it should be one august body that is very capable to handle the work.

Ms. Wynne: I just want to be clear what we're talking about here, because it's my understanding that under section 26, the appeal that we're talking about is an appeal of a compliance order. So someone is under an order to comply and can appeal that order to a tribunal. It's not about accessibility for individuals. That's not the kind of appeal we're talking about. Can I get some clarification about that, that those individual appeals could still go to the Human Rights Commission?

Ms. Hewson: You're correct, Ms. Wynne. These are appeals on whether a regulation or standard has been complied with or a report has been made.

Ms. Wynne: So it would be the person under the order—

The Chair: Excuse me—

Mr. Marchese: If I could encourage people to speak clearly into the mike. I can't hear very well.

The Chair: I would ask that you repeat what you answered, and then I'll go back to you, Ms. Wynne.

Ms. Hewson: I beg your pardon. Yes, Ms. Wynne is quite right that these are appeals from an order of the director.

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Ms. Wynne: So it's the organization or the person who has been ordered to comply who would be appealing to the tribunal; it's not someone appealing the accessibility of a building or a service.

Ms. Hewson: That's correct.

Ms. Wynne: So then, by being as clear as possible with standards, we're trying to cut down the number of appeals of this nature that there would be. There is still recourse for individuals who feel that accessibility is not adequate, with the Human Rights Commission. Is that correct?

Ms. Hewson: That is correct.

Ms. Wynne: OK. Thank you. That's the reason I won't be supporting this amendment.

Mr. Jackson: I was aware of what you just said; I'm just finding it difficult that we need multiple tribunals to deal with people who don't want to comply.

Mr. Marchese: Ask that question.

Mr. Jackson: Again, we're dealing with a section—I think it's wrong to have seven or eight or nine different

tribunal boards that you can go to. It's as bad today as when you say, "Which judge did I get in Family Court? I'll know exactly how well my client is going to do trying to get custody of her children." This is administratively sloppy, because you've got two or three different—

Ms. Wynne maybe didn't understand the point I was trying to make. It's not that the disability community will be lining up to have an appeal; this is people who don't want to comply with the legislation. I get that. I'm saying the Ombudsman doesn't have two or three different departments that operate separate from each other. That was my point. I don't think the disability community is well served that you can shuffle off an appeal from the private sector or the government or whoever is appealing to any number of tribunals. Frankly, some people might be very, very interested in the goings-on in these tribunals and want to know, and the only way they're going to track them is if there is one that has the expertise to handle it.

Why do you envisage having multiple—because that's the big, substantive difference here: You say "one or more tribunals," whereas both Mr. Marchese and I and the ODA Committee said that there should be one appeal mechanism and not multiple opportunities with various appeal groups that you can go after. That goes on all the time. People say, "I don't want to go to that one; I'd rather go to this one, because their last three rulings were pretty soft on the private sector. I don't want to go to that one. Stay away from that one, whose chair is so and so, because they've had some tough rulings." That's what I'm trying to avoid here.

Ms. Hewson: I guess the point I could perhaps make is that it would not be the person against whom the order is made who would have the decision about what tribunal to go to; it would be the government that would designate the tribunal. So it's not really a question of shopping the forum, which is I think what you might be suggesting.

Mr. Jackson: But the government would have multiple choices, you envisage in this wording.

Ms. Hewson: The wording would allow the government to choose from among many tribunals.

Mr. Jackson: I'm not comfortable with that at all, frankly, especially since—it's on the record that the government is going to be taking forward in this process to say, "You're not in compliance. Your GO trains are not accessible." Now they can choose not have GO trains included. After they get a bad ruling or in their opinion it costs too much money, they can say, "Sorry, we're going to amend that." Then you've got a tribunal they can go before and they get to pick which tribunal they want to take their appeal to. I don't know; I just think we should be keeping it simple, streamlined, professionally staffed, a full-time commitment, and compensate them for their work. Those are measures of quality control.

Mr. Marchese: I'm not quite clear yet. Obviously this is something that is driven by the civil servants, I am assuming. I'm not clear why we want to give the minister the flexibility to be able to direct any matter to a variety of different tribunals versus one. It isn't yet clear to me

why we want to do that. If you could just parse that down a little bit, the opposition against one tribunal versus the option to have the ability to send it to many tribunals. I'm not clear why. I haven't heard the logic behind it—or maybe the government, I don't know; I thought it was a civil servant kind of idea.

The Chair: Would Mr. Ramal want to answer?

Mr. Ramal: As we mentioned, so many different tribunals already exist. If there's no need to establish one, why do we have to establish it? That's why the minister or the ministry or the director is in charge of directing the appeal, so he chooses which one fits and is suitable to direct the appeal to. That's why. It's going to give the flexibility.

The Chair: Before I go back to you, Mr. Marchese, I'd like to—

Ms. Wynne: Just very briefly, there's an issue of expertise as well. If we're talking about a tribunal that would look at the building code or transportation, I would like to think we would have people with some expertise and some experience on that tribunal. I think that makes it a more efficient process.

Mr. Marchese: I guess that's why we are arguing for a single tribunal that presumably would have the expertise to deal with this bill and all of its components. I assume that this tribunal that could be set up would have that expertise to deal with this, rather than other tribunals that may or may not have the expertise on this as it relates to this particular bill and people with disabilities. We're trying to particularize the tribunal to people with disabilities rather than sending it to other tribunals that may have expertise in the field, no doubt, but I have more confidence in setting up a tribunal as it relates to this bill.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We go to page 61; Mr. Ramal, please.

Mr. Ramal: I move that subsection 26(1) of the bill be struck out and the following substituted:

"Designation of tribunals

"26. (1) The Lieutenant Governor in Council shall, by regulation, designate one or more tribunals for the purposes of this act and of the regulations within a reasonable time after the first accessibility standard is established under section 6."

I think that's why we've been debating for the last 15 or 20 minutes, talking about the implementation, enforcement of this bill. If we have to re-establish the standards for accessibility, we can go and establish a new tribunal to deal with the issue after the standard is established

within a reasonable time. That's what we've been talking about for the last 15 or 20 minutes.

The Chair: Is there any debate? Mr. Marchese and Mr. Jackson?

Mr. Marchese: Just to repeat some of the arguments around the language "within a reasonable time," the government members already have enough experience, those who are new, to know that "within a reasonable time" is a very flexible term. It doesn't have any time connected to it because "reasonable" is prescribed by government, which could be anywhere from zero to four years or zero to eight. It could be or it may never be. It might not even be proclaimed.

I'm not clear why the government doesn't want to find language that prescribes a time. Why not "within a prescribed time" language rather than "within a reasonable time"? Why would you not put in language that makes us feel something will happen, for example?

Mr. Jackson: What's significant in this amendment—I'm not sure the government members even get it: We're now going to allow the tribunal to sit and question the regulations. I can't believe I'm seeing this. When I read these over on the weekend to get ready for today, I'm sorry, I didn't catch it because I should read the two together. You've got a standards committee that's been working for five years to create a standard. You then have a ruling. The ruling is imposed on a group of people. Then we create multiple tribunals for the private sector. I keep using the private sector, but people who don't want to comply, we force them to come out and comply.

1650

The tribunal has the standards, and now we're throwing in the regulations. First of all, this is the first time I've ever seen that. We can now have maybe an independent tribunal—the tribunal would sit and hear from the private sector, saying, "Do you know what? Not only do I not like your standard, I don't like the regs."

The disability community came into this debate saying, "We want to make sure those regs are on the Web site. We can analyze them. We can have input before they become the law and they're gazetted and sent to every library and law office in the province."

I don't know why you're throwing in the words "and of the regulations within a reasonable time." I can understand that the purpose of a tribunal is because somebody is not happy with the standards you've imposed. Now we're saying we can put the regs on the table. Well, I thought the regs were our domain. We're politicians. We were elected. When you're the government, you take them forward to cabinet. The cabinet committee, with some of your own backbenchers sitting on it, is going to say, "Those are the regs we're going to impose on the public of Ontario. Those are the regs that are backed up in this legislation we're working on today. Those are the regulations that the public can rely upon to guide them through changing Ontario to become closer to barrier-free."

Now we're going to throw in those very regs. They're going to be the subject of the private sector. They'll say,

"Not only do I not like your plan and the standards; I don't like the regs."

I'm not going to support this. I've never quite seen giving a statutory tribunal the right to review your regs. Hell, we don't even give that to the energy board. I just don't believe I'm seeing it, but that's fine. I'm sure lawyers in your ministry had a purpose to this, but it's beyond me.

Ms. Wynne: I need to hear from staff. Could I just have clarification as to the meaning of this, for the purpose of this act and the regulations—that section of this amendment?

Ms. Hewson: I think I'd ask David Lillico to respond.

Mr. David Lillico: The tribunal does not have power to change or to not apply the standards. The standard is a type of regulation. It's set out in section 6, which the committee looked at earlier. It has the power to interpret them. So there wouldn't be a power in the tribunal. The tribunal's functions are set out in the appeal section, which is coming up next. We haven't discussed it yet. It's in section 27.

As was mentioned earlier, the tribunal listens to appeals from orders, but it doesn't have the power to change the regulations—

Ms. Wynne: Or the standards.

Mr. Lillico: —or the standards or any other kind of regulation.

Ms. Wynne: I just want to be clear that this amendment does not in fact give the designated tribunal the authority to change or do away with a regulation or a standard. OK, thank you.

Mr. Jackson: However, my legal training tells me it doesn't prevent the person who wants to change an order from appealing on those grounds. Don't forget you're dealing with an appellant, quasi-judicial tribunal panel. The grounds on which you argue become the turf on which you fight, and we've introduced the regulations into this. Otherwise, I don't see any purpose why we've added that word here. Now that it's on the table, that means you can debate it.

I agree with you, Ms. Wynne, that it doesn't mean the tribunal will have the power to change it, but those compelling arguments spill over to the one I was so exercised about 20 minutes ago that says now the director can look at that and say, "Yup, do you know what? That reg is pretty nasty. It's really hurting the private sector. They don't like this one at all." So now they can vary the—but they've heard the legal arguments before the tribunal. Why are we wasting the tribunal's time with this? I'm not arguing with you that the tribunal won't have—it says they will do the hearing on those issues. Those are the grounds upon which the public debates. I've never quite seen it before. It doesn't exist in other legislation. I know you're quite familiar with the Education Act and the areas in which the labour unions are allowed to argue their points. The act allows them certain latitudes, and there are some things you say just can't be on the table. I guess now we can put the regs on.

I didn't think we were going to let anybody go out and argue our regs. But anyway, we'll leave it at that.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Jackson, Marchese.

The Chair: The motion carries.

The next one is 61a; Mr. Ramal.

Mr. Ramal: I move that section 26 of the bill be amended by adding the following subsection:

"Powers and duties

"(3) A tribunal designated under subsection (1) may exercise such powers and shall perform such duties as are conferred or imposed upon it by or under this act."

The Chair: Any further debate?

Mr. Jackson: So because we passed 26(1), we can confer or impose upon the tribunal the ability to examine the regulations.

Mr. Ramal: That makes sense. I guess it goes hand in hand with the previous section.

The Chair: Any other questions or comments? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

We will deal with section 26. Shall section 26, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. It carries.

Section 27: Mr. Marchese, page 62.

Mr. Marchese: I move that subsection 27(1) of the bill be amended by striking out "that is the subject of an order" and substituting "that is the subject of or otherwise affected by an order".

This amendment makes it possible for people other than those who are affected by an order to do an appeal. If an individual feels that a standard is not being met and that their concerns are being ignored, they will be able to appeal to the tribunal. My amendment makes it more expansive and allows many more people other than that person who is affected by it to have a chance to say, "I'm affected by it too." This speaks to something that many deputants spoke to as well, and I think it reflects their concerns a little more closely than what is before us.

The Chair: Is there any further debate?

Mr. Jackson: I was listening carefully. Is my colleague suggesting that persons— isn't it the same effect that you're giving standing to a group or class of persons who are affected by—

Mr. Marchese: Is it the same, you're saying? Wouldn't it be the same?

Mr. Jackson: Yes.

Mr. Marchese: I'm not sure it is the same; "that is the subject of an order" means only those people affected by it, right?

Mr. Jackson: I interpret that, Rosario, to mean— again, to keep it simple in my mind. The private sector has been told, "You have to do this." They go to the tribunal and appeal. There are two known methods involved here: You can give standing to the other party, as we started doing in environmental cases, so you can participate in the dialogue and so on; or you can let them have a parallel appeal. I'm trying to understand what gets achieved here in legal terms. I know that the government is probably going to strike it down, but before they do, I want to understand the pith and substance of it, which I believe says—what?—that you could have both the private sector, who have to be compliant, before the tribunal, and you could also have a class of disabled persons who are affected by it come forward and appeal it. Am I understanding you correctly?

1700

Mr. Marchese: I'm not sure how to define it other than the way I did, and I'm not sure whether that makes any sense, in terms of how I'm explaining it versus what you're trying to get at. This has to do not just with a company; we're talking about individuals who are affected by it in a corporation. This limits it only to those people who are affected by it which includes individuals and a corporation. My point is that people with disabilities would otherwise be affected by it, even though they may not be in that sector or that employ. This allows other people to say, "I have a stake in this as well."

Mr. Jackson: Legislative counsel isn't jumping in to rule on this, but I think you might find that it's impossible to do that unless you come at it differently legally. It is impossible to have both parties go and duke it out in the tribunal. That's not what is envisaged here. The party required to spend the money and be compliant can appeal. Let me use simple language: Those people who went before the standards development committee and said, "This is what we want," and didn't get everything they wanted, then say, "You know what? I'm going to take that and appeal it to the tribunal." That's not the purpose of the tribunal.

If you're going to put this in, the only known way that I'm aware of, in the way government operates legally, is to say, "We'll give a class of persons standing," or "You may apply to have standing before the tribunal for the purposes of input so you can impact the decision." That works. I don't mean to be critical. First, you have to embrace the principle: Do you believe an appellate mechanism should have both parties there? The second prin-

ciple is, what is the simplest, most effective way to follow the Statutory Powers Procedure Act to allow it to happen? I'm asking, is this doable legally? It's saying that both parties can now go forward and say, "I want to appeal it," and I think it's not a ruling that would work. I'm not the active lawyer in the room, but—

The Chair: Well, you're raising some questions, and that's fine. Mr. Marchese, I go back to you: You're fine?

Mr. Marchese: Yes, in my limited knowledge of law. Is there any legal opinion?

The Chair: Would staff want to—

Mr. Ramal: I agree. What's being proposed by Mr. Marchese, having two people appeal on the same issue, would be very confusing. Also, if you need clarification from the legal department, we're more than happy.

Mr. Marchese: That would be helpful.

Mr. Jackson: To be helpful, it might be worthwhile to stand down this section to give Mr. Marchese an opportunity to look at whether he wishes to approach the notion of standing so it is required to be covered in the regs. Personally, I think this is out of order because it's impossible, by definition, because the act doesn't say that both parties get to appeal. It's the person who's the subject of the order, and that person is a single corporate entity or a group of people. It's not the disability community.

Mr. Marchese: Is that the legal understanding of that section? I would be happy to hear—

The Chair: Procedurally, the motion in front of us is correct. I guess it's up to the committee to decide if they wish to go further. I don't believe there's any technical—

Mr. Marchese: All I'm asking, Mr. Chair, is for a legal explanation.

The Chair: I would like to hear if you have an opinion, since you are legal counsel.

Ms. Sibylle Filion: I'm afraid my role here in committee is to give advice on the interpretation of statutes and not to act as legal counsel to the committee. I'd feel uncomfortable going beyond that right here in committee.

The Chair: That's fine. I thank you for that.

I believe there is a motion on the floor. Unless I hear otherwise, I will now put the question. Shall the motion carry?

Ayes

Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry. We go to page 63.

Mr. Ramal: I move that subsection 27(1) of the bill be struck out and the following substituted:

"Appeals to tribunal

"27(1) A person or organization that is the subject of an order made by a director under section 21, 25 or subsection 33(8) may appeal the order by filing a notice of appeal with the tribunal within 15 days after the day the order is made.

"Notice of appeal

"(1.1) A notice of appeal shall be in a form approved by the tribunal and shall contain the information required by the tribunal."

It's another mechanism to set out standards and clarification on how to file the appeal, the direction that should be taken and also the time frame that should be allowed to file an appeal in this situation.

The Chair: Any debate on the motion?

Mr. Jackson: Do you envisage the tribunals being in camera? Do you consider them to be closed to the public?

Mr. Ramal: Mr. Jackson, I don't know. It's not mentioned here whether they're in camera or private. I have no further information about this issue.

The Chair: Any further debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Fonseca, Jackson, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

Mr. Marchese; page 64.

Mr. Marchese: I move that subsection 27(3) of the bill be struck out and the following substituted:

"Hearing

"(3) The tribunal shall hold a hearing with respect to an appeal under subsection (1) unless a party satisfies the tribunal that the matter may be decided based on written submissions alone."

Under the current act, the tribunal by default takes written submissions and meets in camera. It only meets in public if the case is made that it needs to. This would reverse the onus so that the tribunal meets in public and only goes in camera if the need arises. In my humble view, this will allow for more transparency and scrutiny. I'm proposing the opposite of what they are suggesting in their amendment. For a government that is quite happy to talk all the time about transparency and openness and blah, blah, blah, my motion would help them.

The Chair: Is there any debate on the motion?

Mr. Ramal: I think this amendment will slow the process and also cost additional money. He assumes it's going to be a few appeals. I don't know how we assume that before starting to do anything. We'll leave it for the future to decide whether we have few or more.

Mr. Marchese: Sorry, I didn't hear him very well. Did he say this would slow down the process first of all?

The Chair: That's one of the comments.

Mr. Marchese: And that it would cost more money?

The Chair: That's another comment.

Mr. Marchese: I see. So the idea of having the tribunal meet in public is costly and would slow it down.

The Chair: Is there any further debate?

Ms. Wynne: I just want to be clear that what we're trying to do in this bill, which hasn't been done in previous legislation, is to put some teeth in place, to get standards implemented, to get changes made. So when Mr. Ramal makes the comment that we're trying not to put administrative processes in place that will actually slow down the changes in the community—because that's what this bill is about; that's what previous legislation has not been about. That's our purpose in having the option to have an oral hearing. For example, with the Statutory Powers Procedure Act, the written hearing is the default position, but there is the possibility in this piece to have an oral hearing if that's deemed to be necessary. But our goal is to get the standards in place and to get them implemented.

1710

Mr. Marchese: I just don't understand it, quite frankly. Subsection 27(3) says, "The tribunal shall hold a written hearing with respect to an appeal under subsection (1) unless a party satisfies the tribunal that there is good reason to hear oral submissions." I can't for the life of me understand why we couldn't have meetings in public and why that would be more costly and why that would slow down the process. I just don't understand how they could justify it. I think that people with disabilities would want a public meeting. They don't think it would slow it down. I don't see why it's more costly. I don't know why they're opposed to this greater scrutiny and transparency. It makes no sense.

The Chair: Is there any further debate?

Mr. Ramal: If he wants more clarification, staff of the ministry can answer.

The Chair: That's always available. If there are any questions for staff, I'm sure people will indicate that. I didn't hear that.

Ms. Wynne: Chair, I have a question. I'd like to hear on the public/private issue. Mr. Marchese is making assumptions about what is going to be in public and what is going to be private. Could I hear from staff what the assumption is?

The Chair: Would staff clarify that question, please.

Mr. Lillico: This issue is addressed in terms of written hearing in subsection 9(1.1) of the Statutory Powers Procedure Act, which will apply to these proceedings. It says, "In a written hearing, members of the public are entitled to reasonable access to the documents submitted." So they are available; that's not just to parties—

Mr. Marchese: Section 9 where again?

Mr. Lillico: It's not in this; it's in another statute that was referred to earlier, the Statutory Powers Procedure Act. The procedures in that act will be applicable here in these hearings. It provides for members of the public to have access to the documents submitted in a written hearing.

Mr. Marchese: I don't understand that.

The Chair: The floor is yours, Ms. Wynne.

Ms. Wynne: Yes, since I asked the question. The public-versus-private piece is a red herring in this. We're actually looking for a process that's going to allow the tribunal to make its decision quickly so that whatever changes have to be made or not need to happen.

The Chair: Mr. Marchese has a question, and then I'll go to Mr. Jackson.

Mr. Marchese: I'm puzzled by the arguments of red herrings and other fish. All I'm saying is, "The tribunal shall hold a hearing with respect to appeal under subsection (1)"—publicly—"unless a party satisfies the tribunal that the matter may be decided based on written submissions alone." Sorry if I'm going too fast. I'm just repeating the same stuff.

I don't know. I just think a hearing in public is good. The tribunal should do it in public, and that's a good thing. I just don't see how it slows it down.

Mr. Jackson: We are trying to get at the issue of transparency. I asked the question earlier if it is possible for the hearings to be held in public. Obviously the response to that is that that's not envisaged in this legislation.

I understand the Statutory Powers Procedure Act, but I also am aware that if I represent a disability group, I have to make an application, either through the tribunal or through the freedom-of-information office, and now I'm expected to come up with hundreds of dollars. We are on record as making a very simple request of one minister and we're told it's going to be \$2,000 or \$3,000 to get the photocopying of the material. If you're treating a member of Parliament with that kind of price tag, what's it going to cost the public? We should be careful not to misconstrue that we have a public system that says that if files are sealed, you have reasonable access. Reasonable access can mean, "You can have it, but it's going to cost you a couple of thousand bucks for us to photocopy it and ship it to you and so on."

Mr. Marchese's point and mine as well is very simple: You should have a process that allows for the public to participate as witnesses or observers. We've discussed the issue of standing. We're not there at this point. We're simply asking for a process so that the tribunal meets in a transparent fashion. That's what I thought the intent was. This intent shifts it from saying that all hearings will be a written submission and they may choose to do an oral. Mr. Marchese has reversed the paradigm and is suggesting that they be oral and that you may occasionally wish to allow it to be in writing.

I think the disability community thought they'd have reasonable access to the information during the process, as opposed to after a tribunal has ruled, and subsequent to what we passed a few moments ago, the director can even rescind that.

Obviously, this is going to fail, but I'd like to support it because I support the principle that's being advocated here on behalf of the ODA Committee.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

Shall section 27, as amended, carry? All those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

Section 28, page 65; Mr. Ramal.

Mr. Ramal: I move that section 28 of the bill be struck out and the following substituted:

“Mediation

“28. The tribunal may attempt to effect a settlement of all or part of the matters that are the subject of an appeal by mediation if,

“(a) the parties consent to the mediation; and

“(b) the tribunal considers that it is in the public interest to do so.”

It's basically talking about the role of the tribunal and mediation in this matter. Mediation will take place if there is consent from the parties. We believe this will strengthen the public interest and also that all the appeals and mediations are accepted by all the parties who participate in this mechanism.

The Chair: Can I recognize Mr. Jackson and then come back to you, Mr. Leal?

Mr. Leal: Mr. Jackson's arm was up first.

Mr. Jackson: My point is very simple. The current legislation, as drafted by the ministry and tabled by the minister in the House, says that with the consent of both parties mediation can occur. What the government has stated here is that the tribunal, however, must consider that it's in the public interest to do it. That is a limiting clause. That reduces the amount of mediation. It's put in there as a means for a second level to determine if it's eligible. Do you understand what I'm saying? In your original bill, the state and the tribunal are not affected because it says that both parties have to agree. That principle exists. This now introduces the notion that it has to pass the subjective test by the tribunal that it must be in the public interest. In other words, it's a veto power. I'm not sure it's critical, but it was a lot simpler that if both parties agree to mediation, then they can proceed.

Mr. Leal: I do think this amendment is somewhat critical. I remember that some stakeholders did come forward and expressed concern that the way the mediation provision was outlined in the act could potentially be used by organizations to implement accessibility standards that were lower than what were originally established by the standards committee. I thought that did raise concern about stakeholders. I believe this amend-

ment now gets rid of that situation from occurring. From my perspective, anyway, it is a critical amendment
1720

Mr. Jackson: Mr. Leal, it clearly is backwards in your mind. I just want to take a moment for you to better understand it. If I use your words and your concern, organizations want to make sure that they do not find themselves mediating—and in your definition, mediation has the potential to lower a standard. The act of mediation can never occur under your original legislation because both parties have to agree to it. As long as the disability community says, “Wait a minute. That's not what we wanted. We're not going to mediation,” you go and appeal to the tribunal. However, they can override the mutual agreement, which is the protection—both parties. This is a principle that is strongly upheld in family law, adoption—the list goes on—the whole issue, that mutual agreement issue.

It now says, “Well, we want you to mediate this. You must come to the table and mediate because we think it's in the public interest.” You have the independent tribunal passing a judgment that one of the parties doesn't want to mediate. According to this, they can override that and say, “I'm sorry, we're dragging you in. You're going to mediate.” Are you getting it now?

Interjection.

Mr. Jackson: That is exactly what the effect is here. I thought the government's motion was very sound. It takes the judgment away from the tribunal to say, “You know what? We're not wasting our time with this. You guys go mediate this.” That's fine, if both parties agree. But if one party says no—I'm sorry?

Mr. Ramal: It can go back to arbitration. It's simple.

Mr. Jackson: You're putting one party behind the eight ball. If you've never negotiated—it's awkward.

Mr. Marchese: I have a question of legal counsel. Can (b) override (a)?

Ms. Filion: The two go together.

Mr. Marchese: They go hand in hand?

Ms. Filion: They go hand in hand, yes.

Mr. Marchese: I understood Mr. Jackson to suggest differently.

Ms. Filion: I think Mr. Jackson was saying that you can't have (a) without (b), so (b) is necessary.

Mr. Jackson: What that means is that both parties can agree to the mediation, but if the tribunal doesn't want it to happen, they'll stop it.

Mr. Marchese: What are we trying to accomplish here again?

Mr. Ramal: To protect the public interest.

Mr. Marchese: I see.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Jackson, Marchese.

The Chair: The motion carries.

Shall section 28, as amended, carry? Those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None. The section carries.

The next section is a motion by the PCs, on page 66. Before the motion, I would like to make some comments.

Standing order 75(b) allows the Chair of a committee to "take such reasonable steps as he or she considers necessary to facilitate the committee's consideration and disposition of multiple amendments." Basically, as the Chair, I have the power to make a decision about whether this motion should be addressed as one or separated. You will note that the next motion before you has been drafted as a new part to the bill, made up of several new sections. Parliamentary practice is to move debate and vote on new sections to bills separately. In this circumstance, I will allow the new sections to be moved and debated as a unit to facilitate the committee's understanding of the concept intended in the new part. Of course, members have the choice of splitting the motion into sections. I will ask Mr. Jackson to move it as one, but if you choose, we'll break it down as you choose—or any other members, for that matter.

Mr. Jackson: Thank you, Mr. Chairman, for accommodating moving through this fairly quickly. It is a long-winded change, so bear with me, please.

I move that the bill be amended by adding the following new part:

"Part VI.1

"Duties of the government of Ontario

"Application

"28.1 The duties and obligations imposed on the government of Ontario in this part apply in addition to any duties and obligations imposed on the government of Ontario in the accessibility standards made under this act.

"Conflict

"28.2 If there is a conflict between a provision in this part and a provision in an accessibility standard, the provision in this part prevails.

"Government goods and services

"28.3 In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the government of Ontario shall have regard to the accessibility for persons with disabilities to the goods or services.

"Government Internet sites

"28.4 The government of Ontario shall provide its Internet sites in a format that is accessible to persons with disabilities, unless it is not technically feasible to do so.

"Government publications

"28.5 Within a reasonable time after receiving a request by or on behalf of a person with disabilities, the government of Ontario shall make an Ontario govern-

ment publication available in a format that is accessible to the person, unless it is not technically feasible to do so.

"Government employees

"28.6(1) The government of Ontario shall accommodate the accessibility needs of its employees in accordance with the Human Rights Code to the extent that the needs relate to their employment.

"Applicants for employment

"(2) The government of Ontario shall accommodate the accessibility needs of persons with disabilities who apply for a position as a government employee and whom the government invites to participate in the selection process for employment to the extent that the needs relate to the selection process.

"Training

"(3) The government of Ontario shall ensure that its employees who have managerial or supervisory functions receive training in fulfilling the government's obligations under this section.

"Information

"(4) The government of Ontario shall inform its employees of the rights and obligations of the government and its employees under this section.

"Government-funded capital programs

"28.7(1) If a project relates to an existing or proposed building, structure or premises for which the Building Code Act, 1992 and the regulations made under it establish a level of accessibility for persons with disabilities, the project shall meet or exceed that level in order to be eligible to receive funding under a government-funded capital program.

"Same, other projects

"(2) If a project is not a project described in subsection (1) or if the projects in a class of projects are not projects described in that subsection, the government of Ontario may include requirements to provide accessibility for persons with disabilities as part of the eligibility criteria for the project or the class of projects, as the case may be, to receive funding under a government-funded capital program.

"Ministry accessibility plans

"28.8(1) Each ministry shall,

"(a) prepare an accessibility plan as part of its annual planning process; and

"(b) consult with the Accessibility Directorate of Ontario in preparing the plan.

"Contents

"(2) The accessibility plan shall address the identification, removal and prevention of barriers to persons with disabilities in the acts and regulations administered by the ministry and in the ministry's policies, programs, practices and services and set out a timetable for the removal of these barriers.

"Same

"(3) The accessibility plan shall include,

"(a) a report on the measures the ministry has taken to identify, remove and prevent barriers to persons with disabilities;

“(b) the measures in place to ensure that the ministry assesses its proposals for acts, regulations, policies, programs, practices and services to determine their effect on accessibility for persons with disabilities;

“(c) a list of the acts, regulations, policies, programs, practices and services that the ministry will review in the coming year in order to identify barriers to persons with disabilities;

“(d) the measures that the ministry intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and

“(e) all other information that the regulations prescribe for the purpose of the plan.

“Availability to the public

“(4) A ministry shall make its accessibility plan available to the public.

“Interpretation

“28.9 A reference in this part to an employee of the government of Ontario shall be deemed to be a reference to a public servant, as defined in section 1 of the Public Service Act.”

1730

The Chair: Do you want to make any comments?

Mr. Jackson: It's very self-explanatory. In the government's new legislation, municipalities are required to continue the process of keeping access committees and reporting annually on the progress they're making. It speaks to the issue of the interaction between the public and the disability community and that level of government. Most of these sections, which were contained in the previous ODA, are not carrying over into this new bill. As such, I feel that the government of Ontario should maintain its leadership, primarily in terms of employment equity and in terms of accommodation for its public service.

I also believe that public money should not go into buildings that are by definition currently inaccessible because they are older buildings. That is also covered here. I would also hate to see that piece abandoned from the previous legislation. I don't think the government has a hard time with that. I just believe we'd be well served to ensure that every ministry continues to do the work of making it more accessible, and it doesn't necessarily need the full 20 years in which to do that.

Mr. Ramal: I think this amendment is unnecessary. All the provisions from the ODA, 2001, that relate to government publications and the government Internet site wouldn't be repealed. It will be maintained and it will be used to apply in the regulations and enforcement.

Also, the accessibility planning provisions of the ODA, 2001, would continue in currently obligated sectors until the standards are developed and accessibility reporting requirements are implemented, if Bill 118 passes.

So there's no need for it. We're still going to use it; it's not going to be repealed. The whole content will still remain there. You can go to the government Web site and see it. I think there's no need for changes at the present time.

The Chair: Any comment? If there is none—

Mr. Marchese: I support the amendment. I'm ready to vote.

Ms. Wynne: I just want to make a comment. My understanding is that if we get a standard set in this area, it will actually be higher than what's provided for in this amendment. My concern is that Mr. Jackson is suggesting that the lower standard should stay in place. This piece is lifted directly from the ODA, 2001, and we're trying to put a more rigorous standard in place.

Mr. Jackson: On the contrary. This one says it's the highest standard, which is compliance with the Human Rights Code and which will not be required under the negotiated standards or the exemptions. This doesn't give the minister the right to exempt whole parts of the government. I won't argue with Mr. Ramal that parts of this will stay in place until the government gets its standards, and then it jettisons them. But in the intervening period we must continue to hold to the higher standard than the negotiated standard, and that's the one in accordance with the Human Rights Code as it relates to employment.

I understand that one of the first ones may be employment, but we may not accommodate to the level of the Human Rights Code. For those of us who read the chief commissioner's extensive comments in this area, this is going to be an expensive undertaking. Now, are we going to impose on the entire province? Highly unlikely. But clearly the government, as an employer, has the right, as I've stated in this legislation and the previous legislation, to at least work toward that.

There was a time when we had something akin to employment equity brought in, as I recall, by a Liberal government that dealt with this area. It was difficult and it wasn't achieving the sort of success it might have, but the bottom line is that nowhere else does it refer to this in any statute or any legislation, and it will no longer be in the new legislation.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendments do not carry.

We'll move to the next section, section 29. Mr. Jackson, you are next, but I find this motion to be out of order—

Mr. Jackson: Yes.

The Chair: So you agree?

Mr. Jackson: Yes. You're uncomfortable with the wording. We don't want you to be uncomfortable.

The Chair: And I thank you for being so kind.

I'll move to the next one. Again, it's you, Mr. Jackson; page 68, please.

Mr. Jackson: Actually, I have subsection 29(1), which I tabled.

Ms. Filion: No. Subsection 29(3) will come first.

The Chair: And then we'll do—all right.

I move that subsection 29(3) of the bill be struck out and the following substituted:

“Members

“(3) Two thirds of the members of the committee shall be persons with disabilities.”

I have spoken to this issue before. The municipal accessibility advisory committees are actually retained in the legislation, which is very good and very appropriate. However, we heard all sorts of problems associated with the fact that the penalty provisions were not enforced, and as a result, over 60% of the municipalities are not really being compliant with this section. Part of that is the fact that a minority of individuals on these committees are persons with disabilities, and that was not the intent. It was to give the disability community a direct voice at city hall to impact and give their advice and counsel to committees comprised of municipal public servants and other interested parties. I'm asking that we formalize the membership to go from a majority to two thirds, because clearly there has been non-compliance by municipalities in ensuring that a majority of these people who participate would be persons with disabilities.

Mr. Marchese: I have a question. Cam, you're saying that if it were two thirds, compliance by the municipality would be easier than if you have just a majority? That simple thing would make it so that municipalities would comply?

Mr. Jackson: One of the challenges was that the municipality would appoint employees at city hall who were disabled. They had every right to be there, one would hope, but their voting patterns were such that they would vote down any proposals that would advance the changing of the terms that the committee might be reviewing at that time, a library expansion or—that's really what we're getting at.

1740

Mr. Marchese: On the other hand, Cam, we've heard reports from people where they have given advice to a municipality and the municipality doesn't take that advice. It has nothing to do with a majority or two thirds; it was because the municipality just didn't want to do anything.

Mr. Jackson: We have other amendments that strengthen that. But you're right; that was part of the concerns they had. At this point, I want to make sure that an absolute majority of the persons on those committees would be representing the disability community, and that's not necessarily the case across the province.

The Chair: Any debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Mr. Jackson, page 69, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

“Remuneration

“(3.1) The council shall pay the members of the committee a reasonable compensation and reimburse reasonable expenses of the committee members.”

I have spoken to this issue. We found that one of the instruments being used by some municipalities to subvert the process was to call meetings when there was no HandyVan service or support services for the individuals. This left an awful feeling in people's minds. We just don't want to participate in anything that allows the good work of these accessibility advisory committees to be frustrated, so reasonable compensation for individuals, whether it's interpretive service or whatever, should be included. Perhaps then the councils might take them a little more seriously and attempt to get more done during the course of a meeting, if they had modest reimbursement, which councils do quite regularly for committees of adjustment and other matters.

Mr. Marchese: I support the motion on the basis that a whole lot of people, yes, volunteer because they want to, but many of the people who volunteer are individuals who have a lot of financial problems. So when we ask them, there ought to be some obligation on the part of the government to say, “We've got to help out,” because it does involve a great deal of time. People with disabilities put in a great deal of time to be able to change things that affect their lives. “A reasonable compensation”: Obviously, Mr. Jackson isn't stating what that should be, but anything would be very helpful to them. I support it.

Mr. Leal: I have a question for Mr. Jackson. In your legislation, the ODA 2001, did you flow money to municipalities to pay for compensation for members to sit on the committees?

Mr. Jackson: No; in fact, quite the opposite. The municipalities felt it was reasonable. We were spending most of our money to get the infrastructure in place and to put together the regs and to support the Ontario access committee that was setting the standards for the municipalities.

Let's just put it this way: For the 60% of municipalities who today are in non-compliance, if the minister had approved the penalty I put in the legislation, they'd have all paid a \$50,000 fine. My point, and the reason I came up with \$50,000 and why I negotiated that with the two civil servants who are before us today, was that between \$50,000 or making the committee work, I think it's better to make the committee work.

There's still no penalty in this, except after the entire process is over. I still fundamentally believe that if we're going to have municipal access committees, there has to be a penalty for those municipalities that have been

flagrant with the legislation and said, "We really don't need to do this." We've had some that have refused even to meet. In fairness, Mr. Leal, you came from Peterborough council, which takes this seriously. You've worked well with the community, and you know it works. But unfortunately, we've heard from a lot of communities where it isn't working. I don't want to single people out, but there are a couple of people who serve on municipal access advisory committees in the room with us today, and they're very frustrated by the failure of municipalities to take this seriously.

As to the issue of remuneration, if you can pay someone to sit on a committee of adjustment to look at two neighbours' argument over where a fence should be, I think it's only fair that you say to someone who gives up a day a month to assist a city or town to be more accessible and to give advice on a capital expansion in your park—I mean, you've served on these committees, Mr. Leal; you know how you can benefit from that. The principle is that if you don't get them at the table and participating, the city won't get the benefit of it. We were hearing that they could call a meeting at a time when it was frustrating: "I couldn't get my attendant care assistant to come with me to city hall during those times." There are too many instruments to frustrate the process.

Your government willingly embraces the principle that municipal access councils should exist. We're simply saying that we've learned over the last three years that there are some things we can do to make sure that the interests of the individual disabled persons serving on them are protected and the law is upheld. That's really all I'm trying to do here, is strengthen it, and these are the comments we received from our public hearings.

Mr. Leal: Just quickly, on a private note, Mr. Jackson, I would like it if you could provide me with those municipalities that scheduled meetings that were not convenient for disabled people. I'd be very interested.

Mr. Jackson: Those were deputations. I don't want to name communities in case I'm wrong, but we received a lot of written reports from groups, from individuals who were on committees, and they were very frustrated by it.

The Chair: Any further debate?

Ms. Wynne: I just want to make the point that for us to be downloading costs on to municipalities would be a very difficult thing to do, and that's essentially what this would be. There's nothing to stop municipalities from establishing that relationship with their committees, but I don't think we want to be in a position of downloading those costs.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.

Next, page 70; Mr. Jackson.

Mr. Jackson: I move that subsection 29(4) of the bill be amended by striking out "and" at the end of clause (b) and by adding the following clause:

"(b.1) advise the council on whether buildings that the municipality owns or occupies or is considering purchasing, leasing or constructing are designed so as to remove and prevent any barriers that would prevent persons with disabilities from accessing the building; and".

It's self-explanatory.

The Chair: Any debate on the motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Mr. Jackson, page 71, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

"Response to committee advice

"(5.1) If the committee gives the council advice or makes recommendations that the council decides not to follow or adopt, the council shall provide the committee with written reasons for not doing so and shall make its reasons and the committee's advice or recommendations available to the public in the prescribed manner."

The Chair: Any debate on the motion?

Mr. Jackson: Again I'm trying to follow along with what communities had indicated. I use the example of the access committee in my community of Burlington, which had the publicly funded hospital doing an expansion, with provincial dollars, and they didn't know the committee had looked at the plans and said, "We want a handicapped-accessible washroom in the main lobby." That recommendation was given. City hall issued the building permit. Joseph Brant Memorial Hospital, in its brand new \$10-million expansion, does not have an accessible washroom on the ground floor in that area. The answer was to take the sign down and move the sign. Frankly, these are the kinds of—it may be small to the people around this table, but this was huge, particularly for the MS Society, which was quite upset with the fact that this accessibility issue had been identified and nobody seemed to care.

1750

We heard this. I'm sure Mr. Leal will remember some of the public meetings where the issue of not taking any advice was raised. This serves to strengthen the government's commitment to continue with municipal accessibility advisory committees.

Mr. Leal: Can I ask the clerk a question? I haven't seen it, but I'm sure it's in circulation somewhere. When

Bill 118 went out—usually there's a response from AMO. Has there been any official response from AMO on this particular bill?

The Clerk of the Committee (Ms. Anne Stokes): I would have to check the list—

Mr. Leal: Could you check that for me? My experience is that on any major legislation in the province—and this is a major piece of legislation—AMO usually provides an extensive critique, particularly since this government, unlike others, has reached a memorandum of understanding about when major legislative initiatives come forward. If somebody could provide that for me, I'd appreciate it.

The Chair: The clerk will.

Ms. Wynne: What I see happening here is Mr. Jackson trying to fix things that were wrong with Bill 125 and trying to constrain and fix what happened within the municipalities. We've introduced a new piece of legislation, so the municipalities will get together and there will be standards set across the municipal sector. I don't see the need for this kind of constriction within the municipality section, because we've introduced a new piece of legislation. I think the tweaking that might have been necessary to Bill 125 is rendered moot because we've got a new process in place.

Mr. Marchese: I thought the amendment was a good one, and I'm not quite sure whether Ms. Wynne's remarks are accurate, necessarily. I think this problem is likely to continue, as it did before. This amendment says, "If the committee gives the council advice or makes recommendations that the council decides not to follow or adopt, the council shall provide the committee with written reasons...."

We heard a lot of complaints about this. It's likely to go on. Some might have used a different argument, i.e., that this is going to download more problems on to the municipality. It might, and indeed it could be costly. But that's not why we wouldn't want to do this. It's similar to the previous motion, which I supported, which had to do with remuneration for people to sit on those committees. Yes, it might be downloading a cost to the cities, but if it's for that reason, we'd want to fund this area very adequately so that people can do that. We can't say we don't want to download a certain issue because it would be a cost to the municipality, that to do the right thing is not right because cities would have to pick up the cost.

Cities will have to pick up the cost in many areas for which the government is not going to fund them. A lot of this will be downloaded to them no matter what. They're not going to like it and, by the way, they'll come back. This could provide an argument to the city that says, "We can't do this for the following reasons," and it could be because of cost. The written argument might give the city a tool to be able to say, "It's for these reasons we can't do it. The ministry has passed a bill downloading a certain cost, and we can't do it. It's too expensive."

In my view, this is a way out for some communities to be able to defend themselves when and if they argue they can't do it because they don't have enough money. I

think it's a reasonable thing to do from whatever point of view you look at. So I support this motion.

Mr. Leal: I struggle with this because my experience perhaps is a little different than a lot of others'. Once the standards were in place in my community, we always complied with those standards because we had a very active committee that said—

Mr. Marchese: Yeah.

Mr. Leal: I listened carefully to you—that for the advancement of the disabled community, this was the appropriate and logical and right thing to do. I happen to think that once the standard is in place, there's an obligation on municipalities to live up to the standard and move the agenda forward. I would make the argument, and I made the argument as a city councillor in my community, that it's good for business to do this. It's good for the community to do this and you advance the agenda of disabled people.

Maybe I'm still an idealist. I keep that with me at all times, that this is how this legislation is going to unfold in Ontario.

Mr. Marchese: I just don't understand that argument.

Mr. Leal: Well, I don't understand your argument either.

Mr. Marchese: I understand, Mr. Leal, that every time you guys had to do something, you did the right thing. That's great. You're saying that what you did was wonderful, and I agree.

Mr. Leal: I said it was appropriate.

Mr. Marchese: Whatever you did—

The Chair: Order.

Mr. Marchese: I'm just trying to praise you indirectly.

Mr. Leal: OK.

Mr. Marchese: If the city did something with respect to whatever law was there and you did the right thing, that's great. What we heard was that some cities didn't do that and that recommendations were made and dismissed. That was the point. In spite of what you say, there may be some people who won't do it. So for those who don't see the benefits as you and your municipality do, we're arguing that if they don't want to do something, they should just give reasons for it.

The Chair: Thank you. Everybody has his own view. I think we heard each other. Mr. Jackson, you're next.

Mr. Jackson: I appreciate that Mr. Leal is struggling with this a bit, and I put on the record that I thought that Peterborough did a good job. When I did my consultations there, there was clear evidence that the municipality was already working in this area.

My concern is this—and maybe I can answer your previous question at the same time. Pretty well every council in the province passed the ODAC resolution calling to make Ontario completely barrier-free in accordance with the ODA—virtually everyone. Without exception every municipality I went to and said, "What are you prepared to do?" said, "Nothing. We're not prepared to do anything unless you pay for it all." That was AMO's position. Now, there is no letter dated from six

months ago or from the tabling of this bill with AMO's position. That was one of my first questions. I wanted to know, "Where does AMO stand on this?" AMO has had informal discussions. They've had a warm response. There's nothing on the record from AMO.

I'll set that aside. It's disheartening when councils in 2000 and 2001 passed the ODAC resolution and then, once we had the ODA, flawed as it might have been, it set out clearly the responsibilities of municipalities to do certain things and there was a whole bunch of them that didn't do them. That's all I'm trying to do.

I think if you're going to say in legislation, which the Liberals are doing, and you're putting this in perpetuity, that there shall always be access monitoring in municipalities from now until forever—there's no closure on this—when you've stated that, I would suspect you want it to work. And what defines whether it works?

The first thing that defines a relationship is whether or not you have the right to be told why you said no. For marriage, an employer, any of those relationships, that's required. The relationship that I as a public official and you as both formerly municipally and now had was, if you're going to ask these people to give you input, I think you at least owe them an answer to say, "This is why we're not doing it." That's all I'm asking here. I think that upset people more than whether or not they got compensated or whether people cancelled six meetings in a row. It's when they finally did resolve something and then nothing happened. I think that hurt them.

That's all I'm trying to fix here, Mr. Leal. If you're the one Liberal who sees that, I'd be pleased to have you join me as this goes down in flames.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: That motion does not carry.

Mr. Jackson, page 72, please.

Mr. Jackson: I move that section 29 of the bill be amended by adding the following subsection:

"If no committee established

"(9) If the council of a municipality that has a population of less than 10,000 has not established an accessibility advisory committee, the council shall consult annually with the public, and in particular with persons with disabilities, in accordance with the regulations, on the matters referred to in subsection (5) and on developing strategies for removing and preventing barriers to persons with disabilities in the municipality."

The Chair: Any debate? None. I will now put the question. Shall the motion carry?

Ayes

Arnott, Jackson, Marchese.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry.
Shall section 29, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? None.

Section 29, as amended, carries.

Because it's 6 o'clock, we end today's meeting. We'll resume tomorrow at—

Mr. Jackson: I'm sorry, Mr. Chairman. Legislative counsel and the clerk failed to remind everyone that I have two other amendments on 29.1—

The Chair: For this section?

Mr. Jackson: Yes. I'm sorry.

Ms. Filion: Mr. Jackson, 29.1 is the section that follows 29. It's a different section.

Mr. Jackson: So we still have 29.1 to do.

Ms. Filion: Yes.

The Chair: Is that the only one, Cam?

Mr. Jackson: I've got three, but I can lump them all together.

The Chair: We'll do that tomorrow.

Same time tomorrow. Thank you.

The committee adjourned at 1803.

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Journal des débats (Hansard)

Mardi 12 avril 2005

**Standing committee on
social policy**

Accessibility for Ontarians with
Disabilities Act, 2005

**Comité permanent de
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Loi de 2005 sur l'accessibilité
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 12 April 2005

Mardi 12 avril 2005

*The committee met at 1525 in committee room 151.*ACCESSIBILITY FOR ONTARIANS WITH
DISABILITIES ACT, 2005LOI DE 2005 SUR L'ACCESSIBILITÉ
POUR LES PERSONNES HANDICAPÉES
DE L'ONTARIO

Consideration of Bill 118, An Act respecting the development, implementation and enforcement of standards relating to accessibility with respect to goods, services, facilities, employment, accommodation, buildings and all other things specified in the Act for persons with disabilities / Projet de loi 118, Loi traitant de l'élaboration, de la mise en oeuvre et de l'application de normes concernant l'accessibilité pour les personnes handicapées en ce qui concerne les biens, les services, les installations, l'emploi, le logement, les bâtiments et toutes les autres choses qu'elle précise.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome to the meeting of the standing committee on social policy in consideration of Bill 118, the Accessibility for Ontarians with Disabilities Act, 2005. Once again, I would like to point out several features that we hope will improve accessibility for those who are participating in and attending meetings regarding Bill 118.

In addition to our French-language interpretation, we will be providing at each of our meetings closed captioning, sign-language interpreters and two support services attendants available to provide assistance to anyone who wishes it. They are in the back.

Please identify yourself for the audience. The meeting today will be broadcast on the parliamentary channel, available on cable TV, on Friday, April 15. Also, the Webcast of this meeting will be available on Friday at the same time as the television broadcast on the Legislative Assembly Web site at www.ontla.on.ca.

We will now resume our clause-by-clause consideration of Bill 118. At the last meeting, we had completed consideration of section 29.

Mr. Rosario Marchese (Trinity-Spadina): I would like to add something before you get on to the agenda. I would like to urge people to speak as loudly as they can. I admit a failure of mine: I'm not hearing as well as I would like.

The Chair: Let me do my job, and I'll be happy to refresh everybody's mind before we start.

To continue, I have been advised that the order of consideration of amendments would be improved by considering the motion order. Potentially, before we address 73, we should address 74, 75 and 76. The only issue is that all of them are Mr. Jackson's, so we are going to deal with 73. Therefore, that section doesn't really count any longer.

With the committee's agreement, we'll move to start the meeting on page 73. As a reminder, whenever anyone speaks—both the members and whoever—if you could keep in mind that the louder you speak, the better we can hear. I thank you for reminding me of that.

Mr. Marchese: Mr. Chair, given that Mr. Jackson is here, we might want to revert to the order that is a bit more appropriate to the proceedings.

The Chair: That's fine. Since Mr. Jackson is here, we're going to address pages 74, 75 and 76 before we go back to page 73. Therefore, whenever you're ready, Mr. Jackson, you may want to start with page 74, which is section 29.9.

Mr. Cameron Jackson (Burlington): I think I've renumbered these 29.1, with the assistance of legal counsel.

I move that the bill be amended by adding the following section:

"Municipal goods and services

"29.1 In deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public, the council of every municipality shall have regard to the accessibility for persons with disabilities to the goods or services."

It's self-explanatory, Mr. Chairman.

The Chair: Any comments on the motion?

Mr. Jeff Leal (Peterborough): Just a comment. I understand the spirit—where it's coming from—from Mr. Jackson, but it's interesting. For the last decade at least in Ontario, purchasing managers and people who acquire goods and services for municipalities across the province of Ontario have attended professional conferences and seminars. As a standard of doing their job, when they acquire goods and services, or indeed when they're making recommendations to their respective councils to acquire goods and services through the tendering process, one of the things they're doing these days is making sure that any good or service they apply is accessible for all members of the community.

1530

As I said, I understand where this comes from, but I see it as a bit redundant in terms of what is actually going on in municipalities today. It's not the old days where the province has to be a benevolent dictator toward the municipalities in Ontario. Municipalities are maturing at a very rapid pace in the province, and many of them, providing full accessibility for members of their community, have proactive purchasing policies that they've been following for at least a decade.

Mr. Marchese: It's fair to say that some municipalities do it and do it without needing to be encouraged by the province, and some cities or municipalities do it better than others. There's no doubt about it. It is also fair to say that sometimes they need a nudge, and if it is true that it is within the law, they would be better encouraged to do the right thing in the event that they're not.

Mr. Jackson: The best example I can give is the acquisition of new buses. I was unsuccessful at the cabinet table to get a ruling that all future buses would be low-floor and accessible in the province. We know the Americans are dumping them at cheap prices here because they have the ADA. There are municipalities that would rather buy the cheaper bus and make it an impediment than to buy the low-floor. I come from the city of Burlington where they bought all low-floor, and I'm very proud of that. This is the kind of thing.

My second amendment, if this one is defeated, basically prescribes that it must occur. So I'm at least giving AMO a motion that it likes, which is saying that it have regard to. If it fails, I'm going to tighten it up and allow Mr. Leal the opportunity to put in legislation which he believes to be the norm.

Mr. Marchese: Quickly again, there is a cost to doing the right thing, and municipalities will complain: "Show us the money or give us the money so that we can do the right thing." It is true that in the last government they didn't get the support to be able to do the right thing. However, this is a proper motion. If cities are going to do the right thing, they need help, provincial government help, to be able to do it. I think it's the right thing to do.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.
Mr. Jackson, page 75.

Mr. Jackson: Given that the voluntary process isn't going to work, let's look at a mandatory one.

I move that section 29.1 of the bill be amended by adding the following sections:

"Municipal goods and services

"29.1(1) With respect to goods or services purchased for its own use or for the use of its employees or of the public, the council of a municipality shall only purchase,

"(a) goods and services that meet the prescribed standards, if standards have been prescribed with respect to those goods or services; or

"(b) if no standards have been prescribed with respect to the goods or services in question, goods and services that do not create barriers for persons with disabilities and do not promote the continued existence of such barriers.

"Same

"(2) If the council of a municipality cannot, after due diligence, find goods or services that meet the requirements of subsection (1), it may purchase other goods and services but shall ensure that special accommodations are made in respect of such goods and services for persons with disabilities."

I won't speak to it, Mr. Chairman. Clearly, this takes it to the next level, making it the law in the province, as opposed to the best practices model that Mr. Leal referred to.

The Chair: Any further debate on this motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

The next item is page 76, Mr. Jackson. Just like yesterday, Mr. Jackson, could we address them all at once?

Mr. Jackson: I actually believe this more properly numbered 29.1, correct? Since the other 29.1 was not approved.

The Chair: We can then break down after, if you want to, when the vote takes place, OK?

Mr. Jackson: I move that the bill be amended by adding the following part:

"Part VII.1

"Duties of Public Sector Organizations

"Application

"29.1 The duties and obligations imposed on the organizations in this part apply in addition to any duties and obligations imposed on the organizations in the accessibility standards made under this act.

"Conflict

"29.2 If there is a conflict between a provision in this part and a provision in an accessibility standard, the provision in this part prevails.

"Public transportation organizations

"29.3(1) Every year, every public transportation organization shall,

“(a) prepare an accessibility plan; and

“(b) consult with persons with disabilities and others in preparing the plan.

“Contents

“(2) The accessibility plan shall address the identification, removal and prevention of barriers to persons with disabilities in the organization’s bylaws, if any, and in its policies, programs, practices and services and set out a timetable for the removal of those barriers.

“Same

“(3) The accessibility plan shall include,

“(a) a report on the measures the organization has taken to identify, remove and prevent barriers to persons with disabilities;

“(b) the measures in place to ensure that the organization assesses its proposals for bylaws, policies, programs, practices and services to determine their effect on accessibility for persons with disabilities;

“(c) a list of the bylaws, policies, programs, practices and services that the organization will review in the coming year in order to identify barriers to persons with disabilities;

“(d) the measures that the organization intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and

“(e) all other information that the regulations prescribe for the purpose of the plan.

“Availability to the public

“(4) A public transportation organization shall make its accessibility plan available to the public.

“Definition

“(5) In this section,

“‘public transportation organization’ means a person or entity that provides any service for which a fare is charged for transporting the public by vehicles operated,

“(a) by, for or on behalf of the government of Ontario, a municipality, a local board of a municipality or a transit or transportation commission or authority,

“(b) under an agreement between the government of Ontario and a person, firm, corporation, or transit or transportation commission or authority,

“(c) under an agreement between a municipality and a person, firm, corporation, or transit or transportation commission or authority, or

“(d) under a licence issued by the government of Ontario or a municipality to a person, firm, corporation, or transit or transportation commission or authority, and includes special transportation facilities for persons with disabilities, but does not include any person or entity, or class of person or entity, that is specified in the regulations.

“Other public sector organizations

“29.4 (1) Each year, every prescribed public sector organization shall,

“(a) prepare an accessibility plan; and

“(b) consult with persons with disabilities and others in preparing the plan.

“Contents

“(2) The accessibility plan shall address the identification, removal and prevention of barriers to persons with disabilities in the organization’s bylaws, if any, and in its policies, programs, practices and services and set out a timetable for the removal of those barriers.

“Same

“(3) The accessibility plan shall include,

“(a) a report on the measures the organization has taken to identify, remove and prevent barriers to persons with disabilities;

“(b) the measures in place to ensure that the organization assesses its proposals for bylaws, policies, programs, practices and services to determine their effect on accessibility for persons with disabilities;

“(c) a list of the bylaws, policies, programs, practices and services that the organization will review in the coming year in order to identify barriers to persons with disabilities;

“(d) the measures that the organization intends to take in the coming year to identify, remove and prevent barriers to persons with disabilities; and

“(e) all other information that the regulations prescribe for the purpose of the plan.

“Availability to the public

“(4) A prescribed public sector organization shall make its accessibility plan available to the public.”

1540

The Chair: Is there any debate on the motion?

Mr. Marchese: I just want to say to Mr. Jackson how wonderful Bill 125 would have been with all these amendments he’s proposing. If he was the Premier, they would have happened; there’s no doubt about it. Unfortunately, I’m sure there wasn’t enough support. But these are good things.

It would impose a cost on these public sector organizations. The sadness is that the reason the government won’t support this is that there is a cost factor and they won’t be able to impose this on some organizations because they won’t have the money. I suspect they will go very slow and very easy on them, hoping that within 20 years’ time they will either find the time or the money or find a way to do it. It is costly for some, and my hope is that the provincial government will find the money to make this a reality. Otherwise, it will be hard.

Mr. Jackson: I think it’s fair to say that within Bill 125 there was the authority for the Accessibility Advisory Council of Ontario to proceed with codes, practices and guidelines, and that was never allowed to happen under the change in government. The minister’s priorities were to try something new as opposed to making the existing legislation work.

This is set forward for the historical record as well. There’s no question that the government’s plan is not to have an accountability system structured into this bill. This becomes a template upon which the government-controlled accessibility standards development process will determine timelines and exemptions and the degree to which bylaws have to be reviewed in order to seek out and remove barriers. This is laid down for historical

purposes. This is the direction that the Accessibility Advisory Council was following when Bill 125 was passed. These are part of the standards they were developing at the point that the government changed hands and they were told to stop work on this project.

In fairness to the minister, she has identified transportation as an early priority. I think the disability community is going to know within at least two years the degree to which there is a political will to make our transit systems more accessible.

I'm disappointed that this will be defeated. For that reason, we shouldn't talk too much about it.

The Chair: Is there any further debate?

I will now put the question. Shall the motion carry?

Ayes

Craitor, Jackson.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The item does not carry, so there is no need to take a vote on this section.

We go back to item 73. Mr. Marchese, the floor is yours—the same thing, Mr. Marchese, one motion.

Mr. Marchese: I move that the bill be amended by adding the following part:

“Part VII.1

“Accessibility Plans for Employees

“Application

“29.1 This part applies to every employer who employs persons that are members of a trade union.

“Definitions

“29.2 In this part,

“‘bargaining unit’ means a bargaining unit as defined in subsection 1(1) of the Labour Relations Act, 1995; (‘unité de négociation’)

“‘employee’ means an employee as defined in subsection 1(1) of the Labour Relations Act, 1995; (‘employé’)

“‘trade union’ means a trade union as defined in subsection 1(1) of the Labour Relations Act, 1995. (‘syndicat’)

“Employees’ accessibility plans

“29.3(1) Promptly after this section comes into force, an employer shall begin negotiations with the bargaining agent for the employer’s employees for the adoption of an accessibility plan for the workplace.

“Content of accessibility plan

“(2) An accessibility plan shall address the identification, removal and prevention of barriers to persons with disabilities in the workplace, including in the employer’s hiring practices.

“Timing of negotiations

“(3) An employer and a bargaining agent shall negotiate in good faith with a view to adopting an accessibility plan on or before the prescribed date.

“Failure to adopt plan

“(4) If an employer and a bargaining agent fail to adopt an accessibility plan on or before the prescribed date, the minister shall appoint a mediator to help the parties agree to an accessibility plan on or before a prescribed date.

“Failure of mediation

“(5) If, despite the appointment of a mediator, the parties fail to adopt an accessibility plan on or before the prescribed date, either the employer or the bargaining agent may appeal the matter to the tribunal.

“Power of tribunal

“(6) Upon application by an employer or a bargaining agent, the tribunal shall hold a hearing and, after the hearing, may order the parties to adopt an accessibility plan that shall include such provisions, terms and conditions as the tribunal may specify.

“Compliance

“29.4(1) An employer and the employer’s employees, including those employees that are not members of the trade union, shall comply with an accessibility plan adopted under this section.

“Posting of plan

“(2) An employer shall post an accessibility plan adopted under this part in a conspicuous place in the work premises.

“Conflict

“29.5 If a provision in an accessibility plan adopted under this section conflicts with a provision in an accessibility standard established under section 6, the provision in the accessibility standard prevails.”

If I can use a quotation from the OFL to make the argument that they made: “We are urging the government to compel us and employers to begin this process immediately by implementing a parallel process to the Pay Equity Act, 1987, passed by the David Peterson government. This is one key to the success of the legislation. Our amendments would require every union and employer to bargain accessibility plans. These plans would identify barriers in the workplace that deny access to persons with disabilities. The plans would set out measures to remove these barriers on a timely basis. In workplaces where there is no union, the employer would do, and post, the plan. Employees would then have the right to complain if the plan did not cover all concerns. Accessibility plans would have to be adjusted if necessary to meet standards set by the province when these standards are ready.”

Thirty-five per cent, give or take, of workplaces are unionized. That’s a huge sector of the population that has a bargaining agent. What they’re proposing, in my view, is reasonable and would advance the cause of meeting the changes that the government is proposing in this bill. It’s for that reason that I move it and support it.

1550

The Chair: Is there any debate on the motion?

Ms. Kathleen O. Wynne (Don Valley West): I just want to make a statement about why I won’t be supporting this, and that is that our intention is to have consistent standards across any sector. As I read this amendment, it would lead to inconsistent levels of

accessibility, depending on whether there were unionized workers or not. So I won't be supporting this.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Craitor, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We go back to section 30. Mr. Jackson, page 77, please.

Mr. Jackson: I move that subsection 30(1) of the bill be struck out and the following substituted:

"Directors

"30(1) Within a prescribed time after the first accessibility standard is established under section 6, the minister shall appoint one or more directors for the purposes of this act and the regulations."

That's self-explanatory. There's no time frame set out for the appointment. This is a theme that's been raised by ODAC and others, that there don't seem to be clear and tight timelines with respect to moving this bill forward.

Mr. Marchese: I support the idea of establishing a prescribed time. That part of it is OK. But as both Jackson and I argued, as it related to inspectors, the wording of "one or more directors" is problematic. If the government were to appoint just one, that would solve the problem and they wouldn't necessarily have to hire any others. The way I read it, I think we're going to need more than one director in this case.

I support the spirit of it. We need to have "within a prescribed time" attached to this, but I'm troubled by the idea of "shall appoint one or more," based on the arguments he and I made vis-à-vis the hiring of inspectors.

Mr. Jackson: I find a distinct difference with a director, who we had hoped would be an arm's-length individual, to monitor and keep an integrity to the oversight of this process. I'm comfortable that one individual should be held accountable and report to the Legislative Assembly and so on and so forth. I don't think that is the exact same issue, although I understand Mr. Marchese's point. I can't believe that we will try and do this entire act with only one inspector, who is required to do the review and the oversight of activities around this building and all aspects of this bill. Anyway, we'll just proceed. I'm just trying to make sure that it's done in a timely fashion.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Ramal, page 78.

Mr. Ramal: I move that subsection 30(1) of the bill be amended by striking out "The minister" at the beginning and substituting "The deputy minister."

The same analogy we applied on appointing the inspectors we applied to the directors.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The motion carries.

Page 79, Mr. Ramal.

Mr. Ramal: I move that subsection 30(5) of the bill be amended by striking out "subsections 21(3) and (4)" at the end and substituting "subsections 21(3), (4) and (5)."

Just some technical changes to match the statute with the bill.

The Chair: Is there any debate on the motion?

I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

Therefore, we'll deal with section 30. Shall section 30, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The section carries.

Mr. Jackson, section 31, pages 80 and 80a.

Mr. Jackson: I move that section 31 of the bill be amended by adding the following subsections:

"Notice of committee to be established

"(1.1) The minister shall publish a notice announcing the establishment of the council in a newspaper of general circulation in the province and shall post the notice on a government Internet site.

"Content of notice

"(1.2) The notice referred to in subsection (1.1) shall,

"(a) explain the function of the council;

"(b) state the number of members that are to be appointed to the council;

"(c) identify the qualifications that a person must have to become a council member;

"(d) invite interested persons to apply to the minister to become a council member; and

"(e) set the date by which applications must be received by the minister in accordance with subsection (1.3).

"Timing of application

“(1.3) All applications to become a member of the council shall be submitted to the minister on the earlier of,

“(a) the day specified by the minister in the notice referred to in subsection (1.1); or

“(b) the day that is 21 days after the day the notice is first published in a newspaper of general circulation in the province.

“Publication of applicants’ names

“(1.4) Within three days of the last day for submission of applications to become a member of the council, the minister shall,

“(a) publish the names of all applicants received in accordance with subsection (1.2) in a newspaper of general circulation in the province and post the list of names on a government Internet site;

“(b) invite members of the public to comment on the qualifications of applicants for appointment to the council within 15 days after the day the list of applicants is first published and posted in accordance with clause (a).

“Selection of members

“(1.5) Within 15 days after the last day of the period for public comment referred to in clause (1.4)(b), the minister, having considered the comments received, shall select the members of the council and provide each applicant with the decision to grant or refuse the application and the reasons therefor.

“Publication of appointment

“(1.6) The minister shall publish the names of the appointees to the council in a newspaper of general circulation in the province and shall post the list of names on a government Internet site.

“Term of appointment

“(1.7) The members of the council shall be appointed for a period of five years.”

Very briefly, this is exactly what the ODA Committee has asked for. We heard it in just about every community that this committee visited. They would like to ensure that there is no politics with the appointments and that they are just the very best people available in our province. This is an important committee, or we hope it will evolve to being an important committee, and therefore the membership is one that ODAC wishes to not only take seriously but to participate in.

The Chair: Is there any further debate?

Mr. Marchese: Just quickly, I think this kind of motion helps to educate, to inform the public. As a result, it gives greater access to the public about what is going on with respect to the council, it gives greater accountability and it gives greater transparency—all the things that Liberals love to speak about in the Legislature.

The Chair: Any further debate? I’ll now put the question. Shall the motion carry?

Ayes

Jackson, Leal, Marchese.

Nays

Craitor, Fonseca, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Marchese, page 81.

Mr. Marchese: Subsection 31(4) of the bill.

1600

The Chair: One moment, please. There is another one on the same section, so if you don’t mind, Mr. Marchese, I’ll go back to Mr. Jackson.

Mr. Jackson: I apologize.

The Chair: Please provide a copy to all the members.

Mr. Jackson: I don’t have staff here making notes for me, so if I don’t do it, it isn’t going to get done. Hansard, unfortunately, is backed up quite badly because of the activities going on.

Mr. Marchese: I hear you.

Mr. Jackson: I’m writing as fast as I can.

The Chair: I hear you’re well trained in that, Mr. Marchese.

Mr. Jackson?

Mr. Jackson: I move that subsection 31(3) of the bill be struck out and the following substituted:

“Compensation

“(3) The members of the council shall be compensated for their work on the committee and reimbursed for expenses in relation to that work in an amount to be determined by the Lieutenant Governor in Council.”

The issue is that it shouldn’t be “may,” as it is in this legislation that the Liberals have drafted. Both the previous legislation and this amendment say that these people “shall be compensated for their work,” and reimbursed for their expenses. That would be an amount determined by the Lieutenant Government in Council. You’ve heard from me ad nauseam that the more opportunities a minister gets to take something before cabinet and Management Board for approval, the stronger it is.

I just don’t want to see a situation where we are getting the disabled community to work for free on an important committee, yet we just have to open a newspaper and read about all those people of wealth and power who are appointed to do additional work for the government. I wouldn’t feel comfortable if there was an opportunity here to simply say, “If you can afford to come and volunteer, we’re interested in having you.” So “may” should give way to “shall,” and it should be an amount determined by cabinet to show their support across all ministries to the new minister responsible for this legislation.

Mr. Marchese: My interpretation of “may” is that it won’t happen. That’s usually why you’ve got “may”; otherwise, you would have had “shall.” If you have “shall,” it means it would happen; if you have “may,” it means it won’t. It’s as simple as that.

Liberal members will argue, “Oh, no, that’s not what it means. It means that we can.” My suggestion to you is that you won’t. You’ll take cover under the problem of the deficit that the Tories left you, and you won’t be able

to recover all those tax dollars that the Tories cut, so we're stuck. A whole lot of people who voluntarily become members of these committees, providing valuable advice, do so on their own time. Many are seriously underpaid and many suffering in poverty, but they would find the time to volunteer to make this bill a good one. Not to acknowledge it in a way by saying, "We will compensate," is really very sad, disappointing and depressing.

I think we've got to change the language. I really do believe they need to be compensated. I'm not the only one saying it, nor is Mr. Jackson. Many people who came before this committee and deputed before us said they ought to be given some remuneration.

Anything will help. I'm sure they're not asking for a lot. Anything they receive, based on the Ontario disability plan, is little. They survive on very little. Many of them are poor. This is the least you could do.

The Chair: Mr. Leal, you had a question?

Mr. Leal: I have two questions. I just want to check something with Mr. Jackson.

Mr. Jackson, in your Bill 125, was it "shall" or "may" in terms of compensating people who were going to serve?

Mr. Jackson: It was "shall," and I actually signed the cabinet order setting out the salary for the chair, the vice-chair and the members of the council. That ministerial order has been changed subsequently and the compensation has been devalued, but that's the right of the minister. That's why I don't want the minister playing with it, as has happened. What I'm asking is that the Lieutenant Governor in Council set the salary.

Mr. Leal: Can I continue?

The Chair: Yes, Mr. Leal, you still have the floor.

Mr. Leal: I have Bill 125 here and it says, "The minister may pay the members of the council the remuneration and the reimbursement for expenses that the Lieutenant Governor...." Subsequent to this bill, was there an amendment you made?

Mr. Jackson: No. When I tabled the bill with cabinet, I approved, in the cabinet minute, the compensation levels and that it was mandatory, so I made sure they were protected before the bill went out the door. That's "cabinet minute."

Mr. Leal: Cabinet minute? OK.

I have a question that maybe the acting ADM could help me with.

The Chair: Could staff take a seat, please, at the front. To avoid that our member Mr. Marchese can't hear, could you please get the microphone as close as possible.

Mr. Leal: My question will be quick. I'm sensitive to people who are on ODSP and the threshold levels of earnings and clawbacks. Within the ministry—it may be a bit of a difficulty—have you generally discussed in terms of, if compensation is going to be provided to people serving on the committee, there would be an exception so that it wouldn't be clawed back for people who are on ODSP or OW?

Ms. Katherine Hewson: There have been some discussions regarding that. The rule, as I understand it, under the ODSP program is that honoraria under \$5,000 are not clawed back.

Mr. Leal: Thanks.

The Chair: Any further debate on the motion? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry. Mr. Marchese, page 81, please.

Mr. Marchese: Subsection 31(4) of the bill: I move that subsection 31(4) of the bill be amended by striking out "At the direction of the minister" at the beginning.

You will recall my arguments against this language in other areas. I continue to argue against this language. "At the direction of the minister" means that it may or may not happen. The minister may direct them to do certain things or may not, or may just direct them to do certain things and not others. It's just the way it is. New Democrats don't believe, Marchese doesn't believe, that the Accessibility Standards Advisory Council should be limited or should wait as to what it ought to do. They ought to be able to advise the minister on all matters within its mandate and not simply those the minister directs the council to do. This is quite simple and quite obvious in my mind. I'm sure I have the support of all the people with disabilities on this. I'm waiting anxiously to hear the arguments from the Liberal members as they argue against it.

The Chair: Any further debate on the motion? I will now put the question. Shall the motion carry?

Ayes

Craitor, Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Page 82, Mr. Jackson: I understand it is identical, so we will just remove it and I'll go back to Mr. Marchese on page 83.

Mr. Marchese: I move that section 31 of the bill be amended by adding the following subsection:

"Public consultation

"(6) The council shall determine the need for and hold whatever form of public consultation it requires to carry out the duties assigned under subsection (4)."

This is a very straightforward addition. The council ought to be able to have the power to hold public meet-

ings in areas where they think they ought to have public meetings.

1610

It seems to me odd that the Liberal members of this committee could either argue against it or defeat it. This would not unduly hold this bill back. I'm reminding you that you've got 20 years to be able to do this right. If you allow the council to hold some of these meetings, whatever they think they ought to have meetings on—on whatever issue they feel is important—it will not slow down their work one iota. If you want to empower the council to do its job right, it would seem to me bizarre that you would fight against this motion. Not to empower it is to disempower it. Not to empower it in the way that I'm suggesting is to limit its power. Not to empower it is to say to the council, "We don't trust the work you're going to do." It's to say to them, "We're afraid of what you're going to do."

I anxiously await an answer from the Liberal members, because I am convinced that they, as the great supporters of access, accountability, transparency and public participation, will no doubt be looking for an opportunity to support this amendment. Let's wait and see.

The Chair: Is there any further debate?

Ms. Wynne: Yes. As an advocate for consultation, we actually do have an amendment, Mr. Marchese, that we will introduce, which, consistent with the rest of the bill, would read, "At the direction of the minister, the council shall hold public consultations in relation to the matters referred to in subsection (4)." So we'll be accomplishing that consultation piece, transparency and accountability.

Mr. Marchese: The problem I have with the motion they are going to propose is that it says, "at the direction of the minister." Sorry; that is consistently wrong, in my view. It's consistent with the position they've taken, but consistently wrong in terms of its approach. We shouldn't have to wait for the minister to have those meetings. It's really not smart. I was about to say it's dumb, but it's really not smart.

Why should the council have to wait for the minister to say, "OK, you can have this meeting now on this particular issue"? It's really dumb, right? It's not treating that council as an independent body. It's treating it as a body that has to exist at the will of the minister. Doesn't it sound like dumb politics to you? Or if that's too offensive, doesn't it sound like it's not smart? Wouldn't you want to empower it in some way to make them feel you trust them and that you really want them to do the job? The position that you're about to put, after you defeat this, is inconsistently wrong. It doesn't suit you well, as Liberals, to be arguing against public consultation, transparency and accountability. It looks bad on you. I just want to tell you that, for the record.

Ms. Wynne: I just need to say that, indeed, this group exists to advise the minister. It exists at the will of the minister. What is laudable about this is that the minister will have this group to advise on these issues, and that group will be empowered to do consultation. That's the amendment that we're introducing.

Mr. Jackson: My only problem with this is that, historically, these are usually mechanisms when ministers find themselves in a difficult position, and the known instrument around government circles—and every government is guilty of this—is, "Instead of proceeding with the changes to remove barriers in that particular sector or group of persons, I really don't want to, as minister, come out and say, 'This whole group is exempt.'" It's very tricky, politically, to do that. The fact that the minister has put herself in that position in her legislation is awkward.

But the net effect of that is that if a group comes to a minister behind closed doors and says, "We really can't do this right now. Our industry is suffering," for whatever reasons—the best example I can come up with is the one where, I guess it was a week ago, we had the controversy of someone who had a private airing with cabinet, and then all of a sudden, after he leaves, the legislation and the tracking of the legislation is all changed. It's gone out to public consultation, with amendments right off the bat.

It is a known mechanism, if you want to slow down something, that the minister can decide, for political reasons, to do consultation. This is where I'm leaning more on the side of what Mr. Marchese is saying, because the council shouldn't necessarily define itself solely as "at the direction of the minister." It should be self-perpetuating and advising the minister as an advocate for the disability community. That's an entirely different set of circumstances to drive the reform agenda.

I'm fearful, having known these other recent examples of the current government, that this could in fact open the door to say, "You know what? We realized we can't afford to fix transportation. So rather than do anything about it in years seven, eight and nine, we'll have another round of consultations so that in year 10, after the election, we can start work on it." That really sits at the seat of where there's a problem.

"Consultation" is a buzzword that everybody says they support, but consultation has also been used as a criticism: You don't need to consult any more. We know what the issues are; let's get on with it.

That's why I'm having difficulty with the Liberals' proposed amendment. It's at the whim of the minister, and I just don't think we should be whimsical with this. I think we should empower the access council to drive the agenda. I will support this amendment from Mr. Marchese.

The Chair: Is there any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We have another motion within this section from the government side.

Ms. Wynne: I move that section 31 of the bill be amended by adding the following subsection:

“Public consultation

“(4.1) At the direction of the minister, the council shall hold public consultations in relation to the matters referred to in subsection (4).”

I’ve explained why we’re moving this amendment, that it would be consistent with the other parts of this section. We do believe that public consultations should be part of the council’s mandate when the minister so deems.

The Chair: Any debate on the motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The motion carries.

That is the end of section 31; therefore I’ll take a vote on the section. Shall section 31, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The section carries.

Section 32, page 84.

Mr. Ramal: We are going to withdraw that and replace it with a different one, 84a. I believe everyone has a copy.

I move that subsection 32(3) of the bill be amended by adding the following clauses:

“(e.1) consult with organizations, including schools, school boards, colleges, universities, trade or occupational associations and self-governing professions, on the provision of information and training respecting accessibility within such organizations;

“(e.2) inform persons and organizations that may be subject to an accessibility standard at a future date of preliminary measures, policies or practices that they could implement before the accessibility standard comes into force in order to ensure that the goods, services, facilities, accommodation and employment they provide, and the buildings, structures and premises they own or occupy, are more accessible to persons with disabilities.”

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The Chair: Any debate?

Mr. Ramal: I believe it explains itself. It’s open for consultations and applies to all organizations mentioned in this clause.

Mr. Jackson: Just a question to Mr. Ramal: Why have you exempted the health care sector, for example, hospitals, which are included in the previous legislation?

Mr. Ramal: We mentioned all the occupational associations, self-governing professions and—

Mr. Jackson: Those are associations; they’re not institutions. I’m just wondering why hospitals, nursing homes and long-term-care facilities were exempted. We have what’s known as the MUSH sector: municipalities, universities, schools and hospitals. We’ve got municipalities covered where they have to supply access committees, right?

Mr. Ramal: Yes.

Mr. Jackson: We have schools, school boards, colleges and universities now covered. So the only people missing from the MUSH sector under this legislation are hospitals, and by extension, the “H” in the MUSH sector embraces all aspects of health. I’m just wondering why they’re exempt from the legislation.

Mr. Ramal: I believe (e.2) mentions facilities and accommodation, so I believe hospitals would be included, and other institutions. If we need to have more clarification, we can ask—

The Chair: Can staff assist us?

Ms. Wynne: If I could, my understanding is that this is about education around standards and accessibility, and that’s why these are the sectors that are included.

Ms. Hewson: That is correct. The purpose of this is to ensure that the Accessibility Directorate of Ontario will be speaking with educational institutions in order to consult with them around the curricula, the learning experience, so that there is sensitivity training, for example, as people are being educated in those professions or in the school system, around the needs of people with disabilities and accessibility issues.

The Chair: Mr. Jackson, are you satisfied with the question?

Mr. Jackson: No, I’m not, because I’m still not getting an answer as to why they’re exempt. If you are saying that we will provide training for nurses when they’re in school, that’s great. Then why have you added school boards, which don’t do curriculum? The province does the curriculum. Why have you included schools when it should just include school boards? I’m just looking for the consistency of the language.

Ms. Wynne: I think the reason school boards have been included as well as schools is that there are delivery mechanisms that a school board might have control over or an individual school might have control over. They are educational institutions. We heard many times in the hearings that education was a key component of making the attitudinal shift that needed to be made. So we’ve included the organizations, the institutions that have to do with educating children and adults.

Mr. Marchese: I want to speak to the weakness of the entire section. Subsection 32(3) says, “At the direction of the minister, the directorate shall,” and then it lists all the things it can do. I remind you, Chair, and your friends—I know you’re neutral on this committee—that what that language says is that this directorate exists at the will of or the pleasure of the minister, he or she, whoever that person might be at any given point. That means they are not independent, really. They are going to be told what they will do at any time. If they’re not told, the director-

ate really can't do anything, you understand, because they exist at the will of the minister. Even these additions that say "consult with" mean nothing, right? You're going to "consult with." So we add a little and it makes it appear like we're really getting involved with it, a "just to make me feel good" kind of motion. And (e.2), "inform persons and organizations," blah, blah.

The whole section is weak because it doesn't say to the directorate, "These are your responsibilities. Now go out, boys, and do it." It doesn't say that. These people are appointed and then they've got to wait. They say, "Minster, we're here. Do, please, let us know what we should do at any one time." And if the minister says, "Look, I'm busy with other things. We'll get back to you"—Liberal members, do you understand my problem?

Ms. Wynne: No.

Mr. Marchese: Oh, you don't, Kathleen? I could tell. I could tell that some of you have this stare-y kind of position on these issues because you don't support what I'm saying.

Mr. Kim Craiton (Niagara Falls): I understand you, Rosario.

Mr. Marchese: Do you, Kim?

Mr. Craiton: I don't agree with you, but I understand you.

Mr. Marchese: There you go. I needed to hear that to make me feel good. At least one person here—you too, Jeff?

Mr. Leal: I understand.

Mr. Marchese: That's two. That's good. We're making progress.

The directorate should be independent. They should be able to do a certain job and we should tell them what they could do. I'm telling you that when they wait at the pleasure of the minister, we don't know what they're going to do. I'm belabouring it just a touch, but I just wanted to point out the weakness of the language of that whole section.

Mr. Leal: I'm pleased that this amendment is coming forward, because in the Rae review of post-secondary education in Ontario—I'm going by memory—either recommendation 67 or 68 dealt specifically with the need for making colleges and universities accessible for students. I know that my friend Mr. Marchese is a very close ally of the former Premier, and when he made the recommendations—I'm sure he's very supportive of that and I look forward to his voting for this.

Mr. Marchese: Not only am I supportive of this amendment, but they would be wise, in order to make this happen, to change the language of "at the direction of the minister." If he is really so convinced of Bob Rae's argument, give them that power. Don't just say "at the direction of." I have no problem with the amendment, but give them the tools, and the tools are, "Give me the power." You're not giving me the power, Jeff, or at least not to the directorate. You must feel bad about that.

The Chair: I believe Mr. Jackson has a question.

Mr. Jackson: It would have been a point of order, I guess. Are there any further amendments that we're

going to see from the government today, and have they been shared with the committee?

The Chair: Mr. Ramal, could you please answer?

Mr. Ramal: Yes. Section 44—

Mr. Jackson: I mean new ones; ones you haven't tabled with us.

The Chair: Is there anything additional to what's on the agenda already that you're planning to introduce?

Mr. Ramal: I have one more, I guess.

The Chair: Which section would that be?

Mr. Ramal: Section 40.1 of the bill.

Mr. Jackson: That means nothing to us. Custom and courtesy has been established in this committee, and that's why I went to the Chair on a point of order. I thought we had an understanding that if we had amendments, we would share them with the committee in the interests of time.

The Chair: Could I ask, Mr. Ramal, that you issue to all of us a copy of the amendment that you—

Mr. Ramal: Everyone has a copy.

Mr. Marchese: We have a copy right here.

Mr. Jackson: Of which one?

Mr. Marchese: Of sections 41 and 42 of the bill.

Mr. Ramal: Pages 105a, 105b and 105c.

Mr. Marchese: Could you get him a copy? That's what he's asking.

Mr. Ramal: Everyone has copies.

Mr. Jackson: What about page 102a?

The Chair: So then there is no addition.

Mr. Jackson: Rosario, do you have 102a?

Mr. Marchese: Of that one?

Mr. Jackson: No, 102a.

The Chair: Is the answer clear?

Mr. Jackson: I was handed this one from the government and I may be the only member who has it. It was handed to me: 102a.

Mr. Marchese: May I see that?

Mr. Jackson: It was just handed to me. I just want to make sure that everybody is getting this information. I'll give it to the clerk. It was handed to me as a government motion. I just think we should treat everybody the same here.

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The Chair: Could we make sure that everybody gets any amendments or motions at the same time through the clerk? She will distribute it so there's no confusion on the matter. Can we move on?

Mr. Marchese: Sure thing.

The Chair: Is there any other debate on this item? If there is none, I will now put the question. Shall the motion carry?

Ayes

Craiton, Fonseca, Leal, Wynne.

The Chair: Those against? None. The motion carries. That deals with section 32. I will take a vote on section 32. Shall section 32, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The section carries.

We go to section 32.1.

Mr. Marchese: I move that the bill be amended by adding the following section:

“Accessibility Commissioner

“32.1 (1) There shall be appointed, as an officer of the Legislature, an Accessibility Commissioner to exercise the powers and perform the duties specified in this section.

“Appointment

“(2) The Accessibility Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly after consultation with the chair of the standing committee of the Assembly on public accounts.

“Term of office

“(3) A person appointed as Accessibility Commissioner shall hold office for a term of 10 years and shall not hold office for more than one term.

“Same

“(4) The Accessibility Commissioner shall continue to hold office after the expiry of his or her term until a successor is appointed.

“Removal

“(5) The Accessibility Commissioner may be removed from office for cause, before the expiry of his or her term of office, by the Lieutenant Governor in Council on the address of the Assembly.

“Salary

“(6) The Accessibility Commissioner shall be paid a salary within the average range of salaries paid to deputy ministers in the Ontario civil service and is entitled to the privileges of office of a senior deputy minister.

“Pension

“(7) The Accessibility Commissioner is a member of the public service pension plan.

“Employees

“(8) Subject to the approval of the Lieutenant Governor in Council, the Accessibility Commissioner may employ such officers and employees as the Accessibility Commissioner considers advisable for the efficient operation of his or her office and may determine their salary and remuneration and terms and condition of employment.

“Employee benefits

“(9) The following employee benefits applicable from time to time to public servants of Ontario apply to the permanent and full-time employees of the Accessibility Commissioner:

“1. Cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits.

“2. Plans for group life insurance, medical-surgical insurance or long-term income protection.

“3. The granting of leave of absence.

“Same

“(10) If the benefits referred to in subsection (9) are provided for in regulations made under the Public Service Act, the Accessibility Commissioner, or any person authorized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under the regulations.

“Employees' pension benefits

“(11) The Accessibility Commissioner shall be deemed to have been designated by the Lieutenant Governor in Council under the Public Service Act as an organization whose permanent and full-time probationary staff are required to be members of the public service pension plan.

“Premises and supplies

“(12) The Accessibility Commissioner may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his or her office.

“Audit

“(13) The accounts and financial transactions of the office of the Accessibility Commissioner shall be audited annually by the Auditor General.

“Functions of Accessibility Commissioner

“(14) The functions of the Accessibility Commissioner are,

“(a) to monitor and report to the people of Ontario on the implementation of the goals laid out in this act;

“(b) to promote an understanding and acceptance of and compliance with this act;

“(c) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that result in barriers to persons with disabilities;

“(d) to inquire into complaints concerning a failure to comply with an accessibility standard; and

“(e) to perform functions assigned to it under this act or any other act.”

This act needs an Accessibility Commissioner. It needs an advocate. We have an Environmental Commissioner, and the reason for that is because it makes the government accountable. The Environmental Commissioner makes the government accountable on areas of the environment. An Accessibility Commissioner would do the same—ought to do the same. We need an advocate, someone who is going to have the power, not at the direction of the minister, to do certain things. That's laid out through (a), (b), (c), (d) and (e).

In my view, not to have an Accessibility Commissioner is to leave it at the whim of government. There's no doubt some things will happen over a 20-year period. There's no doubt that the people of accessibility are really very happy to have this. It's better than a kick in the teeth, for sure, but an Accessibility Commissioner is what they're looking for, as someone who's independent, free of influence, someone who would report to the

Legislative Assembly, someone the people with disabilities could be happy about and someone who would hold the government accountable to the bill.

We need an advocate. If we don't have one, we're not going to get the kinds of things that we're looking for in this bill. In spite of the good feelings you have about this bill and in spite of all the great things you say about what's going to happen, this Accessibility Commissioner would help you to do the job. Not to have such a person is to have a weak bill; better than a kick in the teeth, for sure, but it will be a weak bill without an Accessibility Commissioner.

Mr. Craitor: Mr. Chair, just a question, through you to my colleague Rosario: There are two amendments here: the one you've just read and there's one that also shows "86." Can you just tell me the difference between the two?

Mr. Marchese: Yes, (c) and (d) of the functions of the Accessibility Commissioner are not part of it. It's the same motion without (c) and (d). If you look at page 85, you see the functions of the Accessibility Commissioner. It just might make it easier for you to accept the other one in the event that you defeat this one. That's why the other one is there.

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Mr. Craitor: Good planning. OK. Thank you.

The Chair: Is there any further debate on the motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Craitor, Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Marchese, would you like—

Mr. Marchese: Mr. Chair, if we have dispensation, could I just simply make reference to the only change of this motion rather than reading it all out?

The Chair: Yes, that's fine, Mr. Marchese.

Mr. Marchese: Page 86, same amendment, except it doesn't have (c) and (d) of the previous amendment, which speak of:

"(c) to develop and conduct programs of public information and education and undertake, direct and encourage research designed to eliminate discriminatory practices that result in barriers to persons with disabilities;

"(d) to inquire into complaints concerning a failure to comply with an accessibility standard."

The same motion without those two sections—omissions.

The Chair: I believe you already made reference, when Mr. Craitor spoke, on the difference.

Mr. Marchese: That's correct.

The Chair: OK. Is there any further debate on the motion? I will now put the question. Shall the motion carry?

Ayes

Craitor, Jackson, Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry. That section does not carry. It's a new one.

We move on to section 33, page 87. Mr. Jackson, please.

Mr. Jackson: Actually, Mr. Chairman, I'll be reading page 88.

I move that subsection 33(4) of the bill be struck out and the following substituted:

"Limitations on exemptions

"(4) The minister shall not grant an exemption under subsection (3) unless the minister is satisfied that the prescribed criteria for the granting of the exemption have been met and that the granting of the exemption is consistent with, and will help promote, the purposes of this act.

"Time limitation

"(4.1) An exemption under subsection (3) shall not be granted for a period that is longer than the prescribed period."

Again, we've got the overusage of the "may" provision. It's bad enough we've got an exemption section for the minister that you can drive a truck through, we then go down the line further in this section that the government drafted and it says, "And, oh, by the way, in granting an exemption which is prescribed by the amount of time, we have the right to extend it indefinitely."

As someone who sat at privy council, this isn't good because, for the obvious reason, people then have to appeal directly to cabinet as to why somebody has been granted an open-ended exemption. This was the best I could do in terms of tightening that up by virtue that it must help promote the purposes of this act and that you cannot grant an exemption beyond the period which has been prescribed; otherwise, in effect, it becomes an exemption in perpetuity by just saying that the minister hasn't terminated it so it continues in perpetuity. I just think that's fundamentally wrong. That's why that one has been tabled.

The Chair: Now, page 87 has been withdrawn and of course we're dealing with page 88. Mr. Marchese.

Mr. Marchese: I just want, for the record, to speak from the ODA committee's analysis of this where they say, "Section 33 of the bill includes a positive new power for the minister to enter into incentive agreements with organizations that are prepared to agree to exceed the requirements of accessibility standards established under this act.

"Section 33(3), however, gives the minister an inappropriate open-ended discretion to exempt an organization from filing an accessibility report or other filing requirements. This loophole threatens to undermine the effectiveness of these agreements as a tool to promote the bill's goals. It enables these agreements to become a means for making it hard to enforce the act in the case of organizations entering into these agreements."

It's a sound argument. This amendment attempts to solve that problem somewhat, so it's better than what is currently there. I wanted to put the case put forth by the ODA against exemptions altogether.

Ms. Wynne: The idea of the exemptions is to give organizations that have demonstrated that they're going to exceed the standard a bit of a break on administrative processes. One of my concerns during the hearings was that we hadn't laid out a process for the reasons or criteria for exemptions being clear, and we're introducing an amendment to clause 40(1)(r) that would require that reasons be given for an exemption. So I'm hoping that we'll have support for that amendment.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry. Shall section 33 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? Section 33 carries.

A new section, Mr. Jackson. Pages 89 and 89a, please.

Mr. Jackson: I move that the bill be amended by adding the following part:

"Part IX.1

"Reviews of Legislation

"Ministry reviews

"33.1(1) Within such time after the coming into force of this section as may be prescribed, every minister shall ensure that a review of all statutes for which the minister is responsible and of all regulations made under those statutes is completed.

"Purpose

"(2) The purpose of a review under this section is,

"(a) to identify barriers that are created under the statute or regulation or that the statute or regulation has failed to remove or otherwise address; and

"(b) to make recommendations for amendments to the statutes and regulations that would remove the barriers or prevent the erection of other barriers in the future.

"Report

"(3) The Minister shall prepare a report of the review of its statutes and regulations.

"Content of report

"(4) The report shall set out a plan for the implementation of the recommendations referred to in clause (2)(b) within the prescribed time period and, if a decision has been made not to proceed with a recommended amendment, set out reasons therefor.

"Report made public

"(5) The report shall be made available to the public in the prescribed manner.

"Future legislation

"(6) The minister shall, before recommending to cabinet that a bill be introduced in the assembly or that a regulation be made or before making a regulation, satisfy himself or herself that the bill or regulation does not contain any provisions that would create or facilitate the existence of barriers for persons with disabilities.

"Legislation relating to construction

"33.2(1) Within such time after the coming into force of this section as may be prescribed, the Minister of Municipal Affairs and Housing shall ensure that a review of all statutes and regulations related to construction industry be completed.

"Scope of review

"(2) The review shall include,

"(a) the Building Code Act, 1992 and the regulations made under that act;

"(b) the Planning Act and the regulations made under that act;

"(c) the Condominium Act, 1998 and the regulations made under that act;

"(d) such other statutes and regulations as the Minister of Municipal Affairs and Housing considers advisable.

"Consultation

"(3) The Minister of Municipal Affairs and Housing shall consult with any other minister responsible for other legislation that is the subject of the review.

"Purpose of review

"(4) The purposes of the review are,

"(a) to harmonize the requirements in various statutes and regulations that are intended to eliminate barriers for persons with disabilities in the construction of buildings and structures;

"(b) to encourage improvements to old and existing buildings and structures that are not accessible by persons with disabilities;

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"(c) to ensure that the construction of new residential buildings by developers meet the requirements of the accessibility standards;

"(d) to ensure that professionals involved in the design and construction of buildings receive training in barrier-free design and to work with governing bodies or associations of such professionals to ensure such training is provided;

"(e) to require professionals referred to in clause (d) to advise individuals building a new residential home of

features that could be incorporated in the home to make it more accessible for persons with disabilities; and

“(f) to provide for the training of municipal building inspectors in matters relating to accessibility.

“Report

“(5) The minister shall prepare a report of the review.

“Content of report

“(6) The report shall set out a time frame to implement measures identified in the report intended to help achieve the purposes of the review.

“Report made public

“(7) The report shall be made available to the public in the prescribed manner.

“Review of municipal bylaws

“33.3(1) Within such time after the coming into force of this section as may be prescribed, the council of every municipality shall ensure that a review of all of its bylaws is completed.

“Purpose

“(2) The purpose of a review under this section is,

“(a) to identify barriers that are created under the bylaws or that the bylaws have failed to remove or otherwise address; and

“(b) to make recommendations for amendments to the bylaws that would remove the barriers or prevent the erection of other barriers in the future.

“Report

“(3) The council shall prepare a report of the review.

“Content of report

“(4) The report shall set out a plan for the implementation of the recommendations referred to in clause (2)(b) within the prescribed time period and, if a decision has been made not to proceed with a recommended amendment, set out reasons therefor.

“Report made public

“(5) The report shall be made available to the public in the prescribed manner.”

This comes out of a concern that I had under the previous legislation, where the work of one ministry does not have primacy over another, and that we try to make amendments to the Building Code Act, which is separate legislation with a separate 10-year-cycle time frame in which reforms can occur. I want to make it clear that a commitment to make Ontario more accessible needs to be done in a fairly timely manner and that those legislations need to be opened in order to effect the reforms. Currently that isn't the case. In fact, without this clause, the government would actually have to come forward to amend each of those legislations individually just to open them for review. This allows the government the authority to go and do that. I think that's very important.

I know there are some problems. AMO would like to negotiate not to have to make amendments to the Planning Act that will cause them and their staff a degree of cost or grief. But if we're committed to this legislation, then we need to overcome the fact that all the various ministries have their silos, but really the municipalities—through the instruments of the building code, the Planning Act and the others I've referenced—hold

the magic key to unlocking why we build buildings and everything else that continue to discriminate against persons with handicaps or cause further barriers.

That work needs to be done almost immediately. This review of legislation for conformity to cause ministers to come together to make it a priority is set out in this recommendation. Unfortunately, you're left with a Minister of Citizenship, as I was, who is left at the cabinet table to plead, “Is it OK if we go in and deal with the accessibility of this sector this year?” That's a flaw in both of our legislations. This says that there would be a commitment by all ministries to begin the process. That's essentially what my bill—the original bill, Bill 125—did by forcing all ministries to do access plans and to start the conversion process. The advisory council would set the standards and give them to the minister, who would then take them to cabinet, and they'd become the regs. This is a very serious issue, and it strikes at the heart of why we're still building apartment buildings and commercial properties that clearly discriminate against the free and open access for persons in our province.

As well, this says, “This will be a priority of the government,” as opposed to taking 20 years to potentially get at some substantive issues that have been identified. That's the purpose in tabling it. It has the support of the ODA committee, because this allows the review to recur in a public way to those four pieces of legislation that I mentioned in my motion.

The Chair: We're going to deal with the entire new section. Ms. Wynne and then Mr. Marchese.

Ms. Wynne: Just very briefly, section 39 in the bill exists so that if an accessibility standard conflicts with the provision of another act or regulation, the provision that provides the highest level of accessibility would prevail. That is in place because the prospect of opening every piece of legislation would be pretty debilitating for the government. There are regular cycles of review of legislation, but we need that section to make sure that the highest standard prevails. That's why that's there. I won't be voting for this amendment.

Mr. Marchese: Just briefly to say that I support the spirit of this amendment. Any government that could do that would be a great government. I don't think any government that we have, or will have, will ever do these things. It's just so hard to do—and it should be done. If we really want to deal with the spirit of this bill, it should be done. But the previous government wouldn't have done it, I suspect an NDP government wouldn't have done it, and I guarantee that a Liberal government wouldn't do it. The spirit of this amendment is sound and the arguments are sound, and for that reason I will be supporting it. But it is because governments are unable to do this and largely unwilling to do this that it will be defeated.

Mr. Jackson: The point I'm trying to make here is that the Building Code Act does not come up for renewal again until 2012. Ms. Wynne makes the point, but that was the same point I had in my legislation, that it shall have primacy. They took the clause directly out of my

legislation. The fact is that if it isn't before you for review, then the matter is in question. Nor is it being driven. It is very possible that the review of the building code—and I shouldn't say this, but the fact is that the building code review was going on. We didn't take full advantage of that opportunity when we had that legislation opened up to make those changes. The reason that happened wasn't because anybody was mean-spirited; it means that the process excluded accessibility. The process said that it will only "have regard" for it. That's the first point. If you haven't been briefed on that point, it's an important point you should know.

So the disability community was politely told, as it has been throughout the last half-century when we've had building codes, "Give us your input." But the purpose of it was driven by municipalities, who have to implement it, and by trade associations and others who have to pay for the change in the standards and deal with public safety and all those other issues. That's what's driving it, and it will not get opened up again until 2012.

In fairness to the government, they've said: "This could take 20 years." The thing that upset me the most was that we continue to build things that are inaccessible. This is the fastest way to stop it. It was Mr. Parsons who has echoed these comments many times; I'll give him the credit. The easiest reform or change you can make in accessibility is not to create or build a new one. It's so simple.

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If you read my amendment and consider it—I disagree with Mr. Marchese; every government has the responsibility to review these from time to time. The Planning Act is when AMO beats up on a government and they capitulate and say, "Yeah, you're right; we'll deal with the Planning Act." The Condominium Act hasn't been opened up in a long time, and I doubt it's going to be opened up again for a while. The building code is prescribed. The fact is, until we get at them, that's how we're going to cause these things to be changed.

Anyway, defeat it if you must, but believe me when I tell you that this was an experience that was not good for this province, that these acts are not coming into full view and under the microscope before the disability community. I lament that fact because the design of the previous legislation was to put the pressure on the ministries to fix things. Of all the ministries that I felt were critical, this one has to get started immediately, and it isn't on the list. It's not on the list of the minister—and she can change her list; I'm not saying it's not on her list. The three or four places she said she'd begin—this ain't even on the radar screen. That's why I put it in; that's why ODAC is concerned about it. All of us are going to be around here in 28 months to commiserate off the record as to whether or not—

Mr. Marchese: At least 28.

Mr. Jackson: No, we're all going to be here in 28 months; it's the 29 months when a lot of people aren't going to be back. But at least for now we're together, and we should try to work together to get this fixed.

The Chair: Is there any further debate on the motion? If there's none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craiton, Fonseca, Leal, Ramal, Wynne.

The Chair: The new section does not carry, so we'll go to the next new section. Mr. Jackson, page 90 and 90a.

Mr. Jackson: I thought that we had already dealt with 90. Oh, this is the elections. Sorry.

I move that the bill be amended by adding the following:

"Part IX.2

"Making Elections Accessible

"Ballots

"33.4 Despite anything in section 34 of the Election Act, for the purposes of an election under that act, ballots shall be available at every polling place in a prescribed form that enables electors with disabilities to mark the ballots by themselves and in private.

"Polling places

"33.5(1) Despite anything in section 13 of the Election Act, in an election under that act, a returning officer shall ensure that every polling place is in a location that is accessible to electors with disabilities.

"Exception

"(2) Subsection (1) does not apply where a location that is accessible to electors with disabilities cannot be found within eight kilometres of the location that would have been selected were it not for subsection (1).

"Sign language and other accommodation

"(3) In an election under the Election Act, a returning officer shall ensure that all polling places in the electoral district provide sign language interpretation for electors who are deaf or hard of hearing and provide such other accommodation of other disabilities as is reasonable.

"Municipal elections

"33.6(1) Despite anything in section 41 of the Municipal Elections Act, 1996, in a municipal election, ballots shall be available at every polling place in a prescribed form that enables electors with disabilities to mark the ballots by themselves and in private.

"Voting places

"(2) In accordance with subsection 45(2) of the Municipal Elections Act, 1996, the clerk of a municipality shall ensure that a voting place is accessible to electors with disabilities.

"Exception

"(3) Subsection (2) does not apply where the voting place that is accessible to electors with disabilities is more than eight kilometres from the voting place that would have been selected were it not for subsection (2).

"Sign language and other accommodation

"(4) In an election under the Municipal Elections Act, a returning officer shall ensure that all polling places in the electoral district provide sign language interpretation for electors who are deaf or hard of hearing and provide such other accommodation of other disabilities as is reasonable."

Very briefly, I feel very strongly about this, because there was a lot of resistance to allowing the disabled to have accessible voting rights in our province—a lot of resistance in every quarter except within the disability community.

In the previous bill, we called upon the Chief Election Officer to prepare a report and to get those reports from every single provincial riding that had an election. I have tried unsuccessfully to get a copy of that report. I am of the belief now, with all the resistance that was presented, that the only way we're going to make our balloting system and voting rights accessible to the citizens of Ontario is if we put it in legislation. This is one of the opportunities we have to do it.

Failing that, I understand the government is going to be opening up legislation to deal with giving the north some extra seats under redistribution, and I'll have an opportunity to table the same amendments then. However, I feel very strongly that there is no real political will to do this. It has been a reasonable request for some time.

I would ask that—we're facilitating it in the interests of time—we separate provincial elections from municipal elections and have two votes. I respect that persons like Mr. Leal and Mr. Craitor, who hold municipal office, may wish to speak to this, about its being inappropriate or whatever. But as we are all provincial legislators, we can effect the change to our Ontario Elections Act.

The Chair: Mr. Jackson, I'm advised that we cannot split the motion as you indicated. Therefore, I'm going to leave the motion as it is.

Mr. Marchese and then Mr. Leal.

Mr. Marchese: I support this amendment.

Mr. Leal: I commended the government back in 1996 when they did change the Municipal Elections Act, because through that act, clerks of municipalities were directed to make sure that all polling locations for municipal elections were fully accessible. That was standard fare across the province. AMO was involved; there was a large and public consultation when the Municipal Elections Act was changed. They changed a lot of elements of that. You would concur, Mr. Chairman, because you were a city councillor. We went a long way to make sure the disabled community could get access for municipal elections. I know that was a big issue for the clerks' association, and I give the government of the day credit for making sure that was carried out.

Mr. Jackson: I've done a little research on this. In 1996, the definition of accessibility was confined to persons in wheelchairs.

Interjection.

Mr. Jackson: Believe me, we've gone through this. If you are suggesting that in Peterborough you have sign-language interpreting and Braille ballots in your community—

Mr. Leal: We went to voting machines, so we did have a different ballot.

Mr. Jackson: Fair enough. Your community chose to do that. I am simply saying that in the last provincial election, these services were not available to the disabled community. ODAC has said so.

The Chair: In the province of Ontario.

Mr. Jackson: In the province of Ontario.

It's because we asked the commissioner to come forward with the recommendations, and they're not forthcoming. We didn't get anything. There's no political will there. Like most major bureaucrats who are responsible for departments, he says, "If you give me the money, then I'll do it."

I'm not getting into that argument. I'm simply saying that it didn't happen, and it didn't happen because we said, "That was the last election that we won't have a fully accessible election." But the report now comes to Minister Bountrogianni under the legislation. I don't see her beating down the Chief Election Officer's door saying, "Where the hell's my report? I want to make sure we're ready." I've checked with Mr. Bryant's office. It's not on his agenda for democratization and fixing the next provincial election. That's the issue here.

1710

Either we are going to, in the advance polls, make Braille ballots available or we're going to have prior notice that people in polling stations need that in order to make it accessible.

A couple of weeks ago, I was working with deaf-blind persons. They need to have those assurances, for those who don't understand Braille, and there's no real accommodation for them. The skill set isn't out there. We have the 28 or 29 months that I've been talking about to get ready for it, but not unless we put it in legislation. We're still waiting for the damn report from the elections commissioner of Ontario.

Mr. Leal is absolutely correct that municipalities are doing a much better job today than ever before, but if you look at the Municipal Elections Act, which was amended, there was a huge amount of pushback about interpretive services, Braille and so on. The disability community said to us, "Access isn't just 'Can I get my wheelchair into that restaurant?' It's everything else." I got it; I'm just surprised we aren't all getting it.

The Chair: Any further debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We'll go back to Mr. Jackson, on pages 91 and 91a.

Mr. Jackson: I move that the bill be amended by adding the following part—well, it won't be part IX.3

because it'll be paginated properly and numbered properly:

“Educational requirements

“School board

“33.7(1) Every school board that is a board as defined in subsection 1(1) of the Education Act shall develop and implement school curriculum components to teach its students about the barriers for persons with disabilities that exist in their community and at large and about the various ways of identifying, removing and preventing those barriers.

“Ministry curriculum

“(2) Within the prescribed period after the day this section comes into force, the Ministry of Citizenship and Immigration and the Ministry of Education shall prepare a model curriculum that may be adopted by school boards under subsection (1).

“Professional training, architects

“33.8(1) The council of the Ontario Association of Architects shall ensure that, within the prescribed time after the day this section comes into force, the admission course offered by the association and required before an individual can obtain a licence to practise architecture in Ontario shall be modified to ensure that students are trained in how to design buildings and premises that are free of barriers for persons with disabilities.

“Same

“(2) The council of the Ontario Association of Architects shall develop a program with respect to the training referred to in subsection (1) within the prescribed time period and shall submit it to the minister for his or her approval.

“Same, other professional

“(3) The Lieutenant Governor in Council may make regulations,

“(a) requiring the governing bodies of prescribed professional associations whose members work in the construction industry to refuse professional recognition to applicants who do not receive training on how to design or construct buildings and premises that are free of barriers for persons with disabilities; and

“(b) requiring those governing bodies to develop training programs that meet the prescribed criteria and to have the programs approved by the minister.

“Training on running a practice

“33.9(1) The benchers of the Law Society of Upper Canada, the council of the College of Physicians and Surgeons of Ontario, the Ontario College of Teachers and the governing body of any other prescribed profession shall ensure that, within the prescribed period after the day this section comes into force, the training described in subsection (2) is provided to applicants who wish to be granted the right to practise the profession before they are granted that right.

“Same

“(2) The training shall inform the students on measures and practices that they should follow in order to ensure that their services are accessible to persons with disabilities and shall meet the prescribed requirements.”

The Chair: We will deal with all the sections. Is there any debate?

Mr. Marchese: Briefly, this amendment is similar to something that New Democrats had introduced earlier and was defeated. It's quite different, but the effect is the same. A lot of deputants spoke about education and that the way to deal with discrimination against people with disabilities is in the education system. This subsection 33.7(1) would do that. It's an effective part of reaching out and educating students.

The other part is to do with making sure that professionals who deal with designing buildings and premises know that they should be free of barriers. It's a measure that I think is a critical part of how we educate and train those who are in this field who ought to know the various barriers that people with disabilities face. So I think it's a reasonable motion.

Mr. Ramal: For the record, I guess, we dealt with this motion when we were discussing section 32 of the bill. We passed it, and we talked in detail about which regulation should be applied and which steps should be taken.

Mr. Marchese: It's not the same.

Mr. Jackson: I don't want to appear rude, but that is so far from what's in front of you. I'm sure that the other members of your team get it, but since you're the spokesperson—

Interjection.

Mr. Jackson: No, I'm sorry. I want to be very careful that I'm not rude, but I'm just trying to say—

The Chair: I think everybody understood. We may interpret it differently. But anyway, you have the floor.

Mr. Jackson: They are substantively different. It specifically impels and calls upon the government to immediately begin the process of changing the curriculum—period, end of sentence, full stop.

This one says that we should consult, that we may make some changes if, on the direction of the minister—maybe. It talks about informing persons and organizations. I'm telling you, we need to be prescriptive. Your Minister of Health figured this one out when he worked on the OMA agreement and talked about the fact that 70% of a doctor's caseload today is senior citizens, and yet they spend less than six hours dealing with seniors over the course of five years of training. He gets it.

You have to go in and change the curriculum and tell people, “You must understand this and make the changes.” We're training people to make decisions about future buildings. I don't think we need to consult about this. Why do we have to be soft? I appreciate that the government crafted this motion after it saw that I had tabled these prescriptive requirements; that's fine. But don't stand here and tell people that we've already dealt with this. You're no more dealing with the architects being required to take the course and learn it than—anyway. I'm sorry; I'm reacting. If you're going to defeat it, defeat it for a good reason; don't suggest that you've already dealt with it, because you sure haven't.

The Chair: Is there any further debate? If there is none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The new section does not carry.

On sections 34 and 35 there is no amendment. Therefore, I'll take a vote for both. Shall sections 34 and 35 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? Both sections carry. Section 36, page 92: Mr. Ramal or Ms. Wynne.

Ms. Wynne: We will not be supporting section 36 of the bill because of the potential for personal information to be disclosed. We've revised our position on that.

Mr. Jackson: What about if you're disabled and adopted?

Ms. Wynne: We're proposing this amendment to remove section 36 from the bill.

Sorry; I didn't hear the comment from Mr. Jackson.

Mr. Jackson: I was saying, "Well, what about if you're disabled and you're adopted? Then we'll allow the personal information."

The Chair: Any debate on the motion?

Mr. Marchese: We support the government.

1720

The Chair: Any further debate? If there's none, I will now put the question. Shall section 36 carry?

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The section does not carry. We move to section 37.

Ms. Wynne: I move that subsection 37(3) of the bill be amended by striking out "deemed to be made on the third day" and substituting "deemed to be made on the fifth day."

This is a technical amendment that would extend the time for deemed service of documents on a person by mail to five days.

The Chair: Is there any debate on the motion?

Mr. Marchese: It seems like a reasonable amendment. I'm going to be supporting this.

The Chair: I'm pleased to hear the supportive comments. I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Marchese, Ramal, Wynne.

The Chair: Those opposed? The motion carries.

Therefore, I'll take a vote. Shall section 37, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Wynne.

The Chair: Those opposed? The section carries as amended.

We've got section 38, page 94.

Mr. Jackson: I move that section 38 of the bill be amended by adding the following subsection:

"Further offences

"(6) The following are guilty of an offence and on conviction are liable to a fine of not more than \$50,000:

"1. A ministry that contravenes clause 28.8(1)(a) or subsection 28.8(4).

"2. A public transportation organization that contravenes clause 29.12(1)(a) or subsection 29.12(4).

"3. A prescribed public sector organization that contravenes clause 29.13(1)(a) or subsection 29.13(4)."

Briefly, the concerns I have here are that the penalties are only for persons or corporations. It does not set out clearly that it will include—

The Chair: I'm sorry, Mr. Jackson. I'm told that because the amendment did not go through, this entire section is out of order.

Mr. Jackson: Because the previous sections weren't approved? OK. I want to thank the clerk for being on top of that early.

The Chair: We're going to remove that. Therefore, I have section 38 with no amendments. Shall section 38 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? That section carries. I have section 39. Shall section 39 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? That section carries.

We have a new section, section 39.1

Mr. Jackson: I move that the bill be amended by adding the following section:

"Tribunal decisions

"39.1 Every prescribed tribunal shall, in exercising a statutory power of decision, make reasonable efforts to render a decision that will not have an adverse effect on persons with disabilities and that will remove and prevent, to the extent possible, barriers for persons with disabilities."

It's self-explanatory.

Ms. Wynne: It just seems to me that this is too prescriptive and really doesn't allow the independence of the tribunal, so I certainly won't be supporting it.

The Chair: Any further debate? If none, I will now put the question. Shall the motion carry?

Ayes

Jackson.

Nays

Craitor, Fonseca, Ramal, Wynne.

The Chair: The motion is not carried. That's a new section, so there is no vote.

Section 40, page 96, Mr Ramal.

Mr. Ramal: I move that clause 40(1)(q) of the bill be struck out and the following substituted:

“(q) defining the terms ‘accessibility’, ‘accommodation’ and ‘services’ for the purposes of this act and of the regulations.”

This is also a technical amendment, and I think the clause is clear.

The Chair: Is there any debate on the motion?

Mr. Jackson: Could I ask the government why this is being deleted, or what—

Mr. Ramal: It's defining.

Mr. Jackson: OK. Thank you.

The Chair: Any further debate?

I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Jackson, Ramal, Wynne.

The Chair: Opposed? The motion carries.

Page 97, Mr. Marchese.

Mr. Marchese: I move that clause 40(1)(r) of the bill be struck out.

That clause says:

“The Lieutenant Governor in Council may make regulations ...

“(r) exempting any person or organization or class thereof or any building, structure or premises or class thereof from the application of any provision of this act or the regulations.”

I refer to the ODA Committee's arguments on this, where they say, “There is no reason why cabinet should have the power to exempt any organization or building from this act.” They then argue, “Under Bill 125, the previous government's proposed Ontarians with Disabilities Act, cabinet was given a similar unwarranted power to grant exemptions. Section 22(1)(i) of Bill 125 provided that cabinet could make regulations.” Then they say, “The Liberal Party”—that would be you guys—“and the NDP”—at the time—“each proposed a comparable amendment to that provision on December 11, 2001. This would have amended clause 22(1)(i) of Bill 125 by adding at the beginning ‘upon approval of the minister and after consulting with the Barrier-Free Council of Ontario and making written reasons available to the public.’”

I recap my argument: When the Tories introduced this in their Bill 125, you Liberals and we New Democrats bonded together and opposed exemptions at that time. I'm urging the same bond again. Let's do this again, now

that you're in government, and let's together oppose what you opposed in 2001. I appeal to them to apply a consistency of argument similar to what they made in 2001.

The Chair: Brothers and sisters.

Mr. Marchese: What are you saying, Chair?

The Chair: I'm happy to hear—

Mr. Marchese: I'm just trying to bond with them again, right?

The Chair: Mr. Jackson.

Mr. Jackson: Yesterday we discussed at length the fact that mediation wasn't a mutual agreement, that one party could be dragged and forced into mediation. Now I have a concern with clause 40 (1)(l), which is referred to in the amendment, because now a disabled person who wishes to appeal a decision will be forced to go into a process that requires them to pay a fee.

Mr. Marchese: We're dealing with 40(1)(r).

Mr. Jackson: You're not deleting with (l)?

Mr. Marchese: No, we're deleting (r).

Mr. Jackson: Well, you should be deleting (l).

Mr. Marchese: You might be right.

Mr. Jackson: Well, we might make a friendly amendment to include (l) and (r) in subsection 40(1).

1730

Mr. Marchese: I'm not going to do that.

Mr. Jackson: You're not going to do that?

Mr. Marchese: No.

Mr. Jackson: I wish you would, because I just don't think it's fair that we tell the disabled community, “You must pay a fee.” I understand the notion of a fee, but if it's \$150, that's certainly a lot worse than \$50 or \$10 or \$5. I hear people have a hard time even paying for their photocopying.

Mr. Marchese: I do agree with Mr. Jackson. There's no doubt about that.

The Chair: Any further debate? I will now put the question.

Mr. Marchese: Hold it. What about the bond?

The Chair: Mr. Marchese, I asked the question. I will now put the question. Shall the motion carry?

Ayes

Marchese.

Nays

Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

We go to Mr. Jackson, on page 98.

Mr. Jackson: It's unnecessary. That matter has been dealt with, Mr. Chairman.

The Chair: Mr. Jackson, page 98 is identical to page 97, so if you don't mind, we'll withdraw it. OK.

We go to page 99. Mr. Marchese, back to you, please.

Mr. Marchese: I move that section 40 of the bill be amended by adding the following subsection:

“Opportunity for comments

“(1.1) The Lieutenant Governor in Council shall not make a regulation under subsection (1) unless the Lieutenant Governor in Council has,

“(a) published a draft of it in the Ontario Gazette at least 90 days before making the regulation;

“(b) allowed interested persons a reasonable opportunity to comment on the draft; and

“(c) made a report to the public summarizing any comments received under (b).”

I refer to the ODA document again. It's a wonderful resource. I should have used it more frequently. Here is what they say in that regard: that “section 40 of the bill be amended to provide that before cabinet can enact a regulation under section 40, it should make public in an accessible format a draft regulation, and provide a reasonable opportunity for public input, in general accordance with the proposed amendments to Bill 125 that the Liberal Party”—that would be your party—“like the NDP, proposed in December 2001.”

Even then, we bonded. Now you're in government, and you see how that bond can simply disconnect so quickly. I want to remind you how close we were.

Mr. Craitor: I wasn't here.

Mr. Marchese: Some of you weren't here; it's true. But I just remind you how close we were when we were in opposition together fighting the other bill because we thought it was so weak. The Liberals and New Democrats argued in the same way.

The Chair: We weren't here.

Mr. Marchese: You weren't all here, but it's history. I'm sure you all read the ODA submission.

Interjection.

Mr. Marchese: It's just a useful reminder in the event that it slipped your mind. I wanted, for the record, to simply point out that we were together on this very section. If we are consistent with the arguments your colleagues made back then, you will support it today, for the same reasons.

The Chair: Any further debate? I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Jackson, page 100, please.

Mr. Jackson: I move that section 40 of the bill be amended by adding the following subsection:

“Exemptions

“(2.1) A regulation shall not be made granting an exemption under clause (1)(r) unless,

“(a) a person or organization has applied to the minister for the exemption;

“(b) the minister has published the proposed regulation in the prescribed manner;

“(c) the regulation sets out the reasons for granting the exemption; and

“(d) the exemption is granted for a period specified in the exemption which does not exceed a prescribed period.”

The Chair: Any debate on the motion?

If there's none, I will now put the question.

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Page 101, Mr. Leal.

Mr. Leal: We're dealing with subsection 40(2.1) of the bill. I move that section 40 of the bill be amended by adding the following subsection:

“Exemptions

“(2.1) A regulation under clause (1)(r) shall state the reasons for exempting the persons, organizations, buildings, structures or premises or classes thereof, described in the regulation, from the application of the provisions specified in the regulation.”

Mr. Jackson: Is there any responsibility to publicize the exemptions?

The Chair: Does anyone wish to answer? If not, please proceed, Mr. Jackson.

Mr. Jackson: Your treatment of exemptions and mine are quite different, because I indicate that we need to let the public know when we make a decision, and in the case of a government agency or someone—I just don't want these secret, behind-the-door deals where someone comes to the minister and says, “Look, we want an exemption.” That happens. Someone has to be on the hook to say, “I've applied for an exemption.” I don't want to give this away as a gift, and that it isn't given the light of day. That's what I was trying to achieve here. You're accepting and acknowledging that we should state the reason for the exemption, but that could be because it was requested, and we never know who requested it. That's the reason.

Ms. Wynne: We heard people asking for more transparency around exemptions, and what we're saying is that those reasons have to be made clear by the government, so that everyone can understand how and why the exemption has been made and the possible reasons that an exemption could be made.

Mr. Marchese: When we bonded together in 2001, their language was that we would consult with the barrier-free council. It doesn't go all the way.

Mr. Leal: It's rebonding.

Mr. Marchese: No, it's like a new bond.

This does make the minister accountable should they make exemptions, so I think it's better than nothing.

The Chair: Further debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Opposed? None. The amendment carries. Page 102, Mr. Jackson.

Mr. Jackson: I move that section 40 of the bill be amended by adding the following subsection:

"Opportunity for comments

"(2.2) The Lieutenant Governor in Council shall not make a regulation under subsection (1) until it has published a draft of it in the Ontario Gazette and allowed interested persons a reasonable opportunity to make comments on the draft to the Accessibility Directorate of Ontario."

That was a specific ODA request.

The Chair: Any debate?

Mr. Ramal: We have no problem accepting this motion, if Mr. Jackson would like to give a period of time—45 days—and that it be put on the government Web site. You have the amendment we're going to submit in a few seconds.

Mr. Jackson: Oh, I see what you're saying. OK.

Mr. Marchese: So you would support this with an amendment?

Mr. Ramal: Yes, of course. We'll withdraw his and we can add—

Mr. Marchese: You have an amendment, right?

The Chair: Mr. Jackson, would you be willing to withdraw it?

Mr. Jackson: Yes, that would be fine.

The Chair: Page 102 has been withdrawn.

Page 102a, Mr. Ramal.

1740

Mr. Ramal: I move that section 40 of the bill be amended by adding the following subsections:

"Draft regulation made public

"(2.2) The Lieutenant Governor in Council shall not make a regulation under subsection (1) unless a draft of the regulation is made available to the public for a period of at least 45 days by posting it on a government Internet site and by such other means as the minister considers advisable.

"Opportunity for comments

"(2.3) Within 45 days after a draft regulation is made available to the public in accordance with subsection (1), any person may submit comments with respect to the draft regulation to the minister.

"Changes to draft regulation

"(2.4) After the time for comments under subsection (2.3) has expired, the Lieutenant Governor in Council may, without further notice, make the regulation with such changes as the Lieutenant Governor in Council considers advisable."

The Chair: Is there any debate on the motion? If none, I will then put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: Everybody supports it and the section carries.

I'll take a vote on the entire section. Shall section 40, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? The section carries.

Section 40.1 is a new one. Page 103.

Mr. Jackson: I'm going to table the one on page 104. I move that the bill be amended by adding the following section:

"Review of act

"40.1 Within three years of the day this act comes into force and every three years thereafter, the executive council shall appoint a person to conduct a review of this act.

"Consultation

"(2) A person conducting a review under this section shall consult with the public and, in particular, with persons with disabilities.

"Report

"(3) The person conducting the review shall prepare a report with respect to the effectiveness of this act and the accessibility standards in identifying, removing and preventing barriers to persons with disabilities and setting out recommendations for improving this act and the accessibility standards.

"Same

"(4) The person conducting the review shall submit his or her report to the minister who shall cause the report to be laid before the assembly if it is in session or, if not, at the next session."

Briefly, the previous legislation caused a review every five years in perpetuity. There was nothing in the original draft. I'm pleased that the government has subsequently tabled an amendment. ODAC has also recommended that we consider a review. The idea of three years comes as a result that there will be a review in the life of each majority government in the province's future. With a four-year review it's quite possible that the review and its subsequent findings will occur outside of the period between two provincial elections, by definition. Rather than opting for four or five years, if the government is successful in bringing in its elections every four years, then three years will allow the disability community to have a report that can underscore and bring the light of day on those issues that are falling behind badly during the course of any future government. That's why I tabled that motion.

Mr. Marchese: I support it.

The Chair: Any further debate? If there's none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry. Page 103 has not been moved, so it is a new section and there is no vote to be taken.

We go to the next section, 40.1.

Mr. Ramal: I want to withdraw the motion we have here and table a different one that I will read.

I move that the bill be amended by adding the following section:

“Annual report

“40.1(1) The minister shall prepare an annual report on the implementation and effectiveness of this act.

“Content of report

“(2) The report shall include an analysis of how effective the standards development committees, the accessibility standards and the enforcement mechanisms provided for under this act are in furthering the purpose of this act.

“Tabling of report

“(3) The minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the assembly if it is in session or, if not, at the next session.”

The Chair: Is there any debate?

Mr. Jackson: I would like to know why the government has abandoned the four-year review. You’ve just voted down a three-year review.

Mr. Ramal: We separated them.

Mr. Jackson: Is that the end of it, or are you going put it in another section?

The Chair: It’s the next motion.

Mr. Jackson: OK. I’ve got three government amendments here. Is it the 105b sheet or is it—

Mr. Ramal: We separated them and we’re going to read the second motion after we vote on this one.

The Chair: He is only asking which page it is.

Mr. Ramal: It’s 102a—I’m sorry. It’s not numbered, actually. It’s section 40.1 of the bill. We’ll call it 105a.

The Chair: OK. Any further debate? If there is no further debate, I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Marchese, Ramal, Wynne.

The Chair: Those opposed? None. The amendment carries.

Mr. Ramal, you still have the floor.

Mr. Ramal: I move that the bill be amended by adding the following section to the bill:

“Review of act

“40.2(1) Within four years after this section comes into force, the Lieutenant Governor in Council shall, after

consultation with the minister, appoint a person who shall undertake a comprehensive review of the effectiveness of this act and the regulations and report on his or her findings to the minister.

“Consultation

“(2) A person undertaking a review under this section shall consult with the public and, in particular, with persons with disabilities.

“Contents of report

“(3) Without limiting the generality of subsection (1), a report may include recommendations for improving the effectiveness of this act and the regulations.

“Tabling of report

“(4) The minister shall submit the report to the Lieutenant Governor in Council and shall cause the report to be laid before the assembly if it is in session or, if not, at the next session.

“Further review

“(5) Within three years after the laying of a report under subsection (4) and every three years thereafter, the Lieutenant Governor in Council shall, after consultation with the minister, appoint a person who shall undertake a further comprehensive review of the effectiveness of this act and the regulations.

“Same

“(6) Subsections (2), (3) and (4) apply with necessary modifications to a review under subsection (5).”

The Chair: Any debate on the motion? If there is none, I will now put the question. Shall the motion carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? None. The motion carries.

We go to section 41, which is Mr. Jackson, page 106.

Mr. Jackson: I move that section 41 of the bill be amended by adding the following subsection:

“Same

“(3) The Lieutenant Governor shall not issue a proclamation repealing a provision of the Ontarians with Disabilities Act, 2001 until all the accessibility standards relating to the subject-matter of that provision have been established under this act.”

This is a direct request of the ODA committee—they were very adamant—and it is the undertaking we have heard from both the minister and the bureaucrats. So I suspect that this will get passed.

The Chair: All right. Any comments on the motion? If none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Shall section 41 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? Section 41 carries, with no amendments.

Section 42: Mr. Jackson, page 107, please.

Mr. Jackson: I move that section 42 of the bill be struck out and the following substituted:

“Commencement

“42. This act comes into force on the day it receives royal assent.”

The Chair: Is there any debate on the motion? If none, I will now put the question.

Ayes

Craitor, Fonseca, Jackson, Leal, Marchese, Ramal, Wynne.

The Chair: Compliments, Mr. Jackson. The motion carries.

Mr. Ramal, page 108.

Mr. Ramal: I move that section 42 of the bill be struck out and the following substituted:

“Commencement

“42. This act comes”—

The Chair: Mr. Ramal, I'm told it's identical, and therefore there's no point. Should we remove, then, 108?

Mr. Jackson, it's back to your 109, please.

Mr. Jackson: I move that subsection 42(2) of the bill be struck out and the following substituted:

“Same

“(2) Sections 1 to 41 come into force on the earlier of,

“(a) a day to be named by proclamation of the Lieutenant Governor; and

“(b) the day that is six months after the day this act receives royal assent.”

The Chair: Any comments? If none, I will now put the question. Shall the motion carry?

Ayes

Jackson, Marchese.

Nays

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: The motion does not carry. Shall section 42, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Section 42 carries.

Shall section 43 carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? Section 43 carries.

Shall the title of the bill carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? It carries.

Shall Bill 118, as amended, carry?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

The Chair: Those opposed? It carries.

Shall I report the bill, as amended, to the House?

Ayes

Craitor, Fonseca, Leal, Ramal, Wynne.

Mr. Marchese: I'm sure we need to report it.

Mr. Jackson: I think we should.

The Chair: OK. All in favour, I hear.

Before we leave, I want to say thank you to staff for pulling with us for so many hours and days, all of you. I also want to say thank you to those people who came to talk with us here. Your contribution is very much appreciated. I also want to say thank you to all the members. I want to say thank you for helping us, as you did, to make this bill what it is. We haven't finalized it yet, but we have at this level. A compliment to Mr. Jackson, who I know is very much interested; Mr. Marchese, with his social conscience; and the government side, with all those nice recommendations and suggestions. All of us have done a good job. I thank you all. Good night.

The committee adjourned at 1754.

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Official Report of Debates (Hansard)

Monday 25 April 2005

Journal des débats (Hansard)

Lundi 25 avril 2005

**Standing committee on
social policy**

Labour Relations Statute law
Amendment Act, 2005

**Comité permanent de
la politique sociale**

Loi de 2005 modifiant des lois
concernant les relations
de travail

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 25 April 2005

Lundi 25 avril 2005

*The committee met at 1536 in committee room 1.*LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Loi modifiant des lois concernant les relations de travail.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome. I was stopped on the way coming here, so I was a few minutes late. I want to welcome all of you to our first meeting about Bill 144. We're going to have three days dedicated to this bill: today and tomorrow here, and then on Friday we're going to be in Kitchener, I believe, in Mrs. Witmer's riding. We are pleased you are here.

PROVINCIAL BUILDING
AND CONSTRUCTION
TRADES COUNCIL OF ONTARIO

The Chair: Our first deputation will be from the Provincial Building and Construction Trades Council of Ontario, Patrick Dillon. Welcome. We have 10 minutes you can use for your presentation. If there is any time left, there will be questions from the three parties. You may begin.

Mr. Patrick Dillon: I'm Patrick Dillon, business manager of the Provincial Building and Construction Trades Council of Ontario, representing 140 affiliated local unions in all disciplines of the construction industry in the province of Ontario. With me today is Richard Baxter, business manager of Local 50 of the International Union of Elevator Constructors and also president of the Ontario building trades. We will make comments today and will file our brief with the committee by Wednesday.

It is an honour to be here today, elected to speak on behalf of workers in the construction industry. In saying that, I caution the committee to be aware of those employers or employer association reps that may attempt to speak on behalf of construction workers. We have no problem with associations and/or employers speaking on their views of how legislation impacts on them as an employer.

The construction industry is unique. We have approximately 98,451 construction establishments in Ontario as per Stats Canada. Construction employers in most cases have multi-projects ongoing throughout the province and in different industries at the same time. For workers to organize their employer in the construction industry is a unique experience. The construction workforce in Ontario is made up of women; aboriginal workers; visible minorities; thousands of new immigrants, both legal and illegal; and as is common throughout the world, is dominated by men.

The exploitation of these construction workers should not be taken lightly. The labour laws that were in place in this province prior to the 1995-2003 reign of the Progressive Conservatives were adequate and had stood the test of time for 50 years. The old Ontario of labour relations stability in the workplace was replaced with gutting the Labour Relations Act based on a corporate agenda and accomplished without consultation with the stakeholders.

The amendments, as presented in Bill 144, are a good first step in achieving the balance that is needed in this province. More unionization of the construction workforce would create a much safer environment to work in. You as political leaders and we as labour leaders have a moral responsibility to ensure that workers have all the protection possible to ensure their safety. A safer workplace also means less costs for the employers of our industry to get passed on to owner-clients. A safer workplace is absolutely better for the overall economy.

The unionized construction industry is the leader in our province and in the country in apprenticeship and training. An example of what I'm speaking of is the high percentage of completion of apprenticeships in the unionized compulsory certified trades like the electrical trade. The unionized electrical apprenticeship completions are in the 87% to 94% range, while in the non-union sector it is from anywhere between 30% and 50%. This is a major expense to Ontario's economy.

There is no doubt that young people today, when seeking a career, are looking for stability. This legislation will aid the construction industry in creating that stability.

Commenting directly on Bill 144, and in no particular order:

Interim relief is necessary to stop rogue employers from causing delays around applications for certification.

We support this section even though we would have preferred interim relief to be expanded to other areas of the Labour Relations Act.

Remedial certification: These provisions are most important in moving toward a balanced Labour Relations Act. Employer interference in workers' attempts to join unions in the last few years has been nothing short of appalling.

It would seem apparent to me that all parties in politics or in unions that are concerned about workers' rights would have to support the above two provisions.

Card-based certification: As mentioned earlier, I made reference to the unique nature of the construction workplace. A non-union worker seeking to join a construction union in Ontario may find that his or her employer has employees in Red Lake, Sudbury, Toronto, Windsor, Ottawa and maybe places in between, and to certify that employer is no easy task. Bill 144 gives the construction worker some hope that their wishes to certify the employer could actually happen. Some unions and politicians are attacking these progressive reforms mostly because card-based certification was extended to the construction industry only. It would appear that some feel the baby should be thrown out with the bathwater. I would prefer to embrace the baby and look for other opportunities to pump fresh water into the system. The building trades would support that—do support it and will support it.

I draw to everyone's attention that this is not the first time construction has been dealt with separately. The provisions in the Employment Standards Act apply differently to industrial and service sector workplaces than they do to construction in a number of cases. There are approximately 40 sections in the Labour Relations Act that apply only to construction. Bill 69, which was brought in by the Conservatives in that eight-and-a-half or nine-year time frame, applied to construction only. Bill 31, project agreement legislation, applied to construction only. Bill 80 of the NDP era, directed at 14 international construction unions, applied to construction only.

I would ask the committee to discuss the issue of petitions in applications for certification. Our position is that petitions should not exist.

Residential arbitration mechanism for construction: Much could be said by construction unions about legislated bargaining rights being taken away; however, we support Bill 144 overall. If the bargaining rights in residential become a problem, we will seek the necessary changes at that time.

With that, I thank you for the opportunity. I don't know if there are questions or time for them.

The Chair: Yes, thank you. We have about four minutes, about a minute and a half each.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): I guess my question to Mr. Dillon would be as follows: As you know, in the last election Working Families was a project, a giant ad campaign, that was funded by the

building trades. I'd like to know how much money you spent fighting our government on behalf of the Liberals.

Mr. Dillon: I don't know the exact amount, but to narrow the Working Families campaign to the building trades is not factual. The teachers and the nurses in this province played a large part, along with the building trades, to fund the end to the Conservative reign.

Mrs. Witmer: The other question I have is, you say that construction is unique. I guess I'm wondering why you would want legislation that would discriminate against and marginalize your employees and not give them an opportunity for a secret ballot vote.

Mr. Dillon: I guess, Mrs. Witmer, if that was a fact, workers over the 50 years that that legislation was in place in the province of Ontario would have raised some concerns about that. It seems to me that when you ask me a question about how much money we spent on trying to get rid of your government in 2003, it was probably not a quarter of what the corporate sector spent in the years previous to 1995 to get rid of the NDP so that you could bastardize the Labour Relations Act. Workers were not asked what their opinion was on that.

Mr. Peter Kormos (Niagara Centre): Thank you, both of you, gentlemen. You know my views on the importance of the trade union movement and its contribution to a high-wage economy. If you want to witness what one reaps in low-wage economies, just go to places in the world where trade union movements have no role whatsoever. Heck, every time I'm on a talking-head television show with somebody who advocates lower minimum wages because it'll create jobs, I propose, "Why don't we reduce it to a buck fifty an hour and we can create that many more jobs? But they really won't make a pile of difference to the economy, will they?"

Thank you, kindly. I appreciate it, both of you.

Mr. Kim Craiton (Niagara Falls): Thank you very much for being here. I do have one question, just a very quick comment. In my riding, and maybe everywhere, we have the building trades and, being past president of the labour council and president of two unions, I worked closely with them.

What I was really interested in, though, if you don't mind commenting, was when you talked about the petitions. Could you just quickly go over that again?

Mr. Dillon: Yes. What has happened in the past is that when the employer finds out that there's a union drive on, maybe an application for certification has gone in, they will encourage employees to take a petition up and to say that they don't want the union in. Those things are very seldom started by a worker. They're usually pushed by the employer for selfish reasons.

The Chair: Mr. Dillon, thank you for your presentation. Thanks again for coming.

COALITION FOR DEMOCRATIC LABOUR RELATIONS

The Chair: The next one will be the Coalition for Democratic Labour Relations. There are a number of

individuals. If you can please take a seat. We also have 10 minutes in total for your presentation. Please start any time you're ready.

Ms. Diane Brisebois: We'd like to thank the committee for the opportunity to share our views and concerns today. Many of our coalition members are in the audience with us, and it should be noted that each organization will be appearing before the committee throughout the week.

Today, the coalition is represented by Judith Andrew from CFIB, Mark Baseggio of Open Shop Contractors Association, and myself, Diane Brisebois, Retail Council of Canada.

Allow me to give you a bit of information on the coalition itself. The Coalition for Democratic Labour Relations comprises 12 industry associations, representing over 100,000 small, medium and large businesses and roughly two million jobs in key sectors of Ontario's economy. It is our shared concern regarding the very negative effects of this proposed legislation which brought a very diverse, and often competing, group of companies together. We sincerely hope this brings home to the government the authenticity and depth of our concerns.

When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance in the workplace. Coalition members couldn't disagree more. We take issue with the way this bill threatens the fundamental principles of democracy by removing the democratic right of employees to vote on whether or not they choose a union and by threatening an employer's right to free speech.

Without major amendments, the coalition believes the bill will create uncertainty in the business community. Not only will it delay key decisions about investments and hiring, it is our view that ultimately decisions will be made to invest elsewhere. The potential loss of investment and job creation will erode the government's ability to invest in its priorities of health care and education. This couldn't come at a worse time, especially given the recently revised forecasts predicting slower economic growth for Ontario in 2005 and budget shortfalls, as we all know.

The coalition has worked collaboratively to develop proposed amendments to the legislation that will achieve the fairness and balance that the government has said this bill is intended to bring about. We are urging the committee to support the principles of democracy and to support our proposed amendments to Bill 144, which we have circulated to the committee.

I now would like to invite Judith.

1550

Ms. Judith Andrew: On the issue of remedial certification, as drafted, the legislation gives the labour relations board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. The government's public messaging is that this power would only be used as a last resort, but in

fact the legislation does not explicitly state this, nor does it explain what that means.

Employers, such as the ones my organization represents, who lack resources, who lack the legal background and experience, may actually find themselves unwittingly committing acts that result in the labour relations board certifying their employees—this without the employees having had any chance to express how they feel about being unionized.

If the government is determined to allow the Ontario Labour Relations Board to actually make this decision on certification in place of employees, the circumstances in which this power is to be used must be clearly set out in the law, and we recommend that this section of the bill be amended to set out the types of conduct that would trigger remedial certification; place the onus of proof on the applicant to prove that no other remedy exists other than to replace the employees' decision with the labour board's decision, and have that be a full, three-person panel of the board making that determination; and, finally, that in every case, employees are given at least one opportunity to cast a ballot and exercise their democratic right.

I'd also like to say a word about decertification posters. Our coalition's concern about the removal of decertification posters is not so much that it has to be removed, but rather that it erodes the employer's right to communicate with his or her employees. In fact, the legislation will effectively make it a violation for employers to tell employees about their own rights under the law.

Small-firm employees do not have the resources to hire expensive labour lawyers. They cannot get the information from the labour board, as the government has stated. Typically, it is very difficult for employees to find this information. We propose that this section of the bill be amended to remove the provision making it an offence to fail to remove the decertification posters and that language be added to clarify that the employer has the same rights to communicate as he or she always had.

We also have concerns with the interim reinstatement powers included in Bill 144. More detail about that is in our brief, but we recommend, in short, that this section be withdrawn.

I'd like to turn now to Mark Baseggio for card-based certification.

Mr. Mark Baseggio: As you are probably all aware, Bill 144 reintroduces card-based certification, stripping employees of their right to a democratic vote. The minister has branded this as a so-called balancing of the act. It exposes employees to a largely unregulated and unmonitored process, which in the end will surely end in litigation—first, the small business owners in your communities.

It's difficult to understand how a democratically elected official would strip his or her constituents of their right to vote. The minister has attempted to justify this action by asserting that the construction employers' workforce is largely very transient. Well, that's really

more typical of a unionized workforce, where there's a hiring hall situation. Members of our organization commonly have employees for five, 10 or 15 years. So we're not sure why the unions are afraid of votes, but apparently they are, and it's no excuse to take a vote away, because it is a more accurate representation of an employee's true wishes.

Next is the definition of "non-construction employer." The coalition is also recommending amendments to the definition of "non-construction employer." There are currently a number of employers in the province who are bound to collective agreements with construction trade unions, when it is clear they are not truly construction employers. This is discrimination against union versus non-union construction employers. With projects coming from the public purse, paid for by the very workers and business owners, you'd hope they would have equal access. Thank you.

Ms. Andrew: Just in terms of wrap-up, we commend our amendments, which are appended, to your attention. I'm sure we've almost used our time, but we do find it disturbing that on an issue as monumentally important as this one, so little time has been allocated to Ontarians to make representation on Bill 144. Our group represents 100,000 businesses; that's got to be a nanosecond per. In terms of lessening the damage from this legislation, we urge the committee to recommend the amendments that we've commended to you.

I'd just like to make a concluding comment. In this room of politicians, who yourselves are elected by a secret ballot process, we find it very disturbing that the government is so cavalier about getting rid of that cornerstone of democracy for others. We hope you will rethink that, because this is very serious.

The Chair: Mr. Kormos, half a minute, please.

Mr. Kormos: I appreciate your frustration, but you've spoken, oh, so effectively for your constituents. The fascinating dynamics of the debate around this bill are that there's a constituency like yours that wants to make it more difficult, in my view, for places to unionize. There's yet another group in the government that wants to extend card certification to the building trades. We endorse that proposition because, heck, we want to extend card certification to every worker in this province. I think unions are good for the workplace, good for the economy. Where I come from, just like Craitor, unions are good for small business, because if we didn't have unionized jobs and the good wages they pay, small business would be saying goodbye to their retail and service force. But I appreciate your point of view.

Ms. Brisebois: Mr. Chairman—

The Chair: No comments, please.

Ms. Brisebois: It's not a question. It's a speech; it's not a question. I just wanted clarification—

The Chair: Madame, please.

Mr. Flynn, we are really tight.

Mr. Kevin Daniel Flynn (Oakville): I understand that, and I appreciate the frustration you must have with not having enough time.

I was a little taken aback on the decertification posters comments you made, and I just wanted a brief comment on that. I've heard a few opinions on that. Some of the larger employers who had good relationships with their bargaining units found them to be a nuisance that poisoned a good existing relationship. Other people have come forward saying, "If you're putting up a decertification poster, why wouldn't you put up instructions explaining how you can certify yourself as well?" I wondered if there was any comment you had on that, or would you just like to leave the decertification posters up?

Ms. Andrew: Just on the last point about matching it with a poster on how to certify, I know the unions in this room and elsewhere are usually pretty good at knowing every nuance of the law and communicating that information in the organizing situation, so we would argue it's not really necessary. On the other hand, decertification is very difficult. If you look at the data, it rarely happens. It's like Hotel California: You get in, but it's very hard to get out.

The Chair: Mrs. Witmer, please.

Mrs. Witmer: Thank you very much. I would just give you the opportunity to respond to Mr. Kormos, if you wish.

The Chair: Would you?

Ms. Brisebois: Yes, thank you. I did not disagree with some of what Mr. Kormos said. I thought the most enlightened comment was that unions are good. In fact, we are not here to argue that unions are not good; we are here to argue that employees should have the democratic right to vote, which is a totally different issue.

The Chair: You can give to us in writing any information or any comments until the 29th of this month, so there's still time for you to provide information if you wish to. We thank you. We have to move to the next presentation.

Mr. Kormos: Thank you, folks. At some point we're going to have a meeting of the minds.

The Chair: Exactly.

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

The Chair: The next one is the Communications, Energy and Paperworkers Union of Canada. You also have 10 minutes for the total presentation. Please proceed.

Mr. Kormos: A former member of the Legislative Assembly.

The Chair: I apologize, and welcome.

Mr. Bob Huget: It's perfectly all right.

The Chair: You'll be on time, then.

Mr. Huget: It seems like so long ago.

Mr. Kormos: Doesn't it?

Mr. Bob Huget: It does indeed.

My name is Bob Huget. I'm administrative vice-president of the Communications, Energy and Paperworkers Union of Canada, more easily known as CEP.

On behalf of the over 50,000 CEP members in Ontario, I am pleased to have the opportunity to make a presentation to you today.

But having said that, I am also disappointed that this legislation is not subject, it would appear, to real, meaningful input or debate, especially since it's so flawed in one particular area, and that is the area that restores card-based certification for 4% of the Ontario work force. To talk a bit about Bill 144 in its current form, I have to go back in history and talk about card-based certification and what it was.

1600

Mike Harris and the Conservatives denied justice to thousands of working women and men across Ontario. Changes to the Ontario Labour Relations Act introduced by his Conservative government in Bill 7 took away the right for workers to have the union representation that they need and deserve. Workers in every corner of the province, in every type of workplace you can imagine, have been denied the right to make desperately needed improvements for themselves and their families.

The decline in union density and the massive reduction in union certifications can be directly linked to the changes of Bill 7, and in particular the removal of card-based certification. The previous Tory government, acting on behalf of its constituents—anti-union employers in the province—had exactly that in mind when they passed the bill.

To be clear, a vote every time on every application for certification simply does not result in democracy in the workplace, nor does it fairly and honestly represent the true wishes of the workers. Since 1950, the card-check system served the province well. Union density was higher, and twice as many certifications per year were granted. The true wishes and desires of the workers were protected, and they were fulfilling them.

Immediately following the passage of Bill 7, the workplace became a war zone on the days between the union application for certification and the vote. It is surprising to see how far some employers will go to defeat the union and deny the true wishes of the employees. We've been involved in organizing campaigns where plant managers are told that if the union wins its certification attempt, they will be fired. You wouldn't have to have too much imagination to figure out just exactly how far individuals under that kind of pressure will go to save their own jobs.

The employees and organizing campaigns are the victims of captive audience harassment all day, every day, with the union having no access. We have seen union supporters disciplined and fired without just cause. Employees are told that if the union wins, the workplace will close. Employees are told the union can only guarantee union dues and strikes. They are led to believe that the union could actually take them backwards, and that they could lose at the bargaining table. They are often and routinely lied to about the amount of union dues.

Employees working for the lowest wages in the worst of working conditions are the most vulnerable and the

most frightened. They often have so little in life, but if they lose even this particular bad job, it is everything, and all they have. That can be terrifying. The card-check system removes this horrible, unfair anti-union campaign from the process. The card-check certification restores justice and best represents the true wishes of the workers.

Premier McGuinty and his Liberal government had promised to undo the injustices imposed by the former Conservatives, and I put it to you that it's time to keep those promises. Bill 144, as it is proposed, corrects some injustices, to be clear, which we appreciate. But without card-check for all, the Liberal government will continue to impose the injustice that originated under the previous Conservative government.

If we could ask for just two improvements to Bill 144, number one would be card-check certification for every Ontario worker; number two would be legislation to make replacement workers against the law. This is not difficult to understand. There are so many fine examples in so many jurisdictions of anti-scab law, how it works, and the fairness and justice that flows from such a law: fewer strikes and lockouts; shorter strikes and lockouts; and much safer strikes and lockouts. Quebec is a fine example of how such law has worked for more than 25 years.

Bill 144, as proposed, is both discrimination and a human rights violation. How can it possibly be fair to offer card-check to construction workers, 4% of the workforce in this province, and not to all? This is also discrimination of the worst kind. It denies justice to the most vulnerable of Ontario workers. Denying card-check certification to the private sector denies justice to some of the worst-paid and poorly treated workers in this province. Immigrant workers and workplaces of mostly women are often found among those undesirable workplaces.

CEP is demanding that Premier McGuinty do the right thing and keep his promise to stop the discrimination and give card-check certification to all working people in Ontario, not just the few.

That's my presentation, Mr. Chairman. Thank you.

The Chair: Thank you very much. There are 30 seconds each. Mr. Flynn, please.

Mr. Flynn: Thank you, Mr. Huget. I thought we had a little bit more time, but just to be clear, then, so I understand, you're in favour of the interim relief, in favour of the remedial certification, in favour of taking down the decertification posters, but you would like to see card-based certification.

Mr. Huget: As I said in my presentation, there are those things, the things you've mentioned, frankly, which are constructive and steps in the right direction. Just the simple certification poster issue, in my experience, played havoc with sound workplaces that had sound labour relations up until that time. It pitted people against people. I think those kinds of things are important, but you missed the mark, sir. Fundamentally flawed legislation that does not restore rights to everyone is going to be a big problem.

Mr. Ted Arnott (Waterloo–Wellington): Thanks for coming in, Bob. Good to see you again.

Mr. Huget: Good to see you.

Mr. Arnott: Why do you think the government has responded to its commitment to extend card-based certification to construction unions but has not kept the promise to other unions?

Mr. Huget: To be fair, I'm not privy to those discussions. I can only speculate or imagine. But what I frankly don't understand, Mr. Arnott, is, what pressing need did someone in the government's benches recognize that it had to be addressed in this way? Where was the huge outcry that only 4% of the people in this province needed to be treated in a certain way, at the expense of all the rest?

Mr. Kormos: Thank you, sir, and that's without mentioning the need to restore anti-scab legislation and to guarantee that all workers, including agricultural workers, have the right to join a trade union. You know, your union and I are ad idem on this issue. Thank you very much for coming.

The Chair: Thank you again for coming. Have a nice day.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793

The Chair: The next presentation is from the International Union of Operating Engineers, Local 793.

Mr. Gary O'Neill: Mr. Chairman, members of the committee, my name is Gary O'Neill. I'm the president of the International Union of Operating Engineers, Local 793. We represent 10,000 members, predominantly in the construction industry operating heavy equipment and cranes throughout the construction industry.

I have with me Bruce Price at the end, who is our legal counsel, and two recent members of the union. It's our goal to illustrate to you what the real world is out there when somebody exercises their right to join a union. They're going to share with you what happens in reality with what some people have put forth as a fair and democratic vote. I think it will show that it's not a fair and democratic vote when people are intimidated, threatened and fired for exercising that right. It completely destroys the free will of the other employees when that happens.

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We are in favour, obviously, of Bill 144 restoring the balance. Some have spoken previously that this is something new that has been brought forward, a whole new change. It was in place for many, many years and worked well in the industry.

I am going to, at this point, turn it over—we have with us Ron Belich and Glen Paul—and let them explain to you what happened when they chose to join the union.

Mr. Ron Belich: My name's Ron Belich. I belong to the 793 union. The union was trying to step into a company and make it unionized. A lot of people knew that I had things to do with the union, so all the employees

started asking me if it would be of benefit to them to join the union. Of course it would be of benefit to them to join the union, for the pension and the better workforce that they have, and safer work.

I do excavation, water and sewer. There's so much digging going on without trench boxes and stuff that it's just dangerous. We're digging holes and the owners are turning around and getting three, four guys to watch that the banks don't cave in. This is ridiculous.

So I said that we'd be better off going union and it'd be a safer environment to work in. The employees started thinking it over. Because I mentioned all this, the employer turned around and pulled in a general meeting of everybody who worked there. They handed out a letter stating that if the union would be voted in, the company would close the doors. Everybody would be out of a job.

I usually travel with one other person going into the job site. That day, going into work, there were seven people in the same vehicle asking me, "Can they do this or can't they?" I said, "No, they can't."

It was starting to change over to where everybody wanted to get into the union. The employer was threatening everybody that they'd be out of a job, and they can't do that. It's just that the work environment had to be safer. That was the main thing.

So then the employer was catching wind that the vote was changing. The following Friday, they picked me up off the job. They said they had a very important matter to discuss with me. They took me back to the office. They said, "We understand that you're very strong with the union and you want the company to join the union and you're talking to the boys and the vote is changing." I said, "The vote could be changing; I'm not sure 100%." They said, "Well, we don't need anybody to push the union here, we don't need to be union. Dismissed. You're laid off; shortage of work." To this day still they're working on that exact same project that I was on and they pulled me off of. So the influence there, what they do with people, is just phenomenal.

Mr. Glen Paul: Hi. My name's Glen Paul. I joined operating engineers 793 at the beginning of September 2004. I signed a union card when the organizing campaign began. The organizing campaign—I'm nervous here—anyway, I'll just go off the top of my head here.

I was approached by the union rep to sign ballots. We all signed ballots; there were three of us. I was approached by the—this is bad.

The Chair: Talk to us.

Ms. Kathleen O. Wynne (Don Valley West): We're listening.

Mr. Paul: Go ahead.

Mr. O'Neill: What happened in Glen's situation is, he signed the card in support of the union and told his co-workers that he thought the union would be the best environment for them. Shortly thereafter his employer accused him of stealing diesel fuel some two months prior and said, "I give you two choices: either you quit or you're fired." He said to the employer, "I will not quit

because I didn't steal diesel fuel," and he told him that he was fired.

It was clear to himself and the other employees that he was one of the ones who was a leader in wanting to have the union in place.

Now Bruce is going to touch on a couple of areas.

Mr. Bruce Price: Thanks, Gary. These stories of employer misconduct that you've just heard aren't unusual. Unfortunately, they're not all that uncommon. We believe that Bill 144 will restore balance and fairness to the Labour Relations Act and will provide both an effective deterrent and meaningful remedies, in the form of remedial certification and substantive interim orders, for such employer misconduct. Moreover, we believe that the return of card-based certification will not only help to minimize employer interference in union organizing campaigns but will produce results that are highly democratic in nature.

We think that critics of this legislation are wrong if they suggest that the changes brought about by Bill 144 will harm Ontario's economy. Those claims simply belie the history of labour relations legislation in this province. For approximately 50 years, the Labour Relations Act had, in one form or another, provisions dealing with remedial certification and card-based certification. That's clearly a significant period of time, and those provisions coexisted with periods of time during which there were undeniable prosperity and productivity gains in the province. In our view, this legislation, by promoting fairness and harmonious relations among workers and employers, will lead to increased prosperity in the province.

Critics also suggest that a secret ballot vote, in every case, is the most democratic form of employee choice and that the reintroduction of card-based certification is somehow an affront to employee choice and workplace democracy. We support the return of card-based certification for at least three important reasons.

First, card-based certification responds to the uniqueness of the construction industry, as Mr. Dillon highlighted earlier. Ours is an industry that is characterized by workplaces and workforces that are often in a constant state of flux. Under those circumstances, it can be difficult to ascertain employees' wishes. Card-based certification responds to that reality of life in the construction industry.

Second, card-based certification minimizes employer interference in organizing campaigns and thereby helps to ensure that employee wishes are heard.

Finally, since card-based certification will require the union to achieve 55% support among the entire bargaining unit, as opposed to a simple majority among those who show up to vote, as under the current legislation, card-based certification is really often more democratic than the current "vote in every case" system. It ensures that there's going to be broad-based support among those in the bargaining unit.

A secret ballot vote in every case simply does not work in all situations. Where an employer has dismissed union supporters or threatened to close the business if

unionized, as in Mr. Belich's case, then the choice for employees becomes a choice between a job and union representation, and we all know how that's going to turn out. Remedial certification responds to these situations and fundamentally recognizes that in certain situations, the true wishes of employees cannot be determined through a vote. Accordingly, Local 793 supports Bill 144 in its entirety, and we eagerly anticipate its passage into law.

The Chair: Thank you for both presentations, gentleman.

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RETAIL COUNCIL OF CANADA

The Chair: We'll move on to the next presentation, from the Retail Council of Canada. One of the reasons we are tight with time is that if we spend too much time on one presentation, we're taking away from the others. Otherwise, it would be more flexible.

Mr. Kormos: You're doing a fine job, Chair.

The Chair: If Mr. Kormos says so, I'm very happy.

Please proceed any time you're ready. You have 10 minutes.

Ms. Diane Brisebois: My name is Diane Brisebois. I'm the president and CEO of the Retail Council of Canada. Thank you for the opportunity to appear again today. I will try to move through the presentation quickly so that we do have some opportunity for questions. I'm sure there will be some.

RCC has been the voice of retail since 1963. Our 9,000 members represent all retail formats, including mass merchants, independent merchants, specialty stores and on-line merchants. Approximately 90% of our members are small independent retailers, and over 40% of our membership is based in Ontario. In Ontario alone, the retail sector contributes almost \$129 billion annually to the economy, representing 5% of the provincial GDP.

Despite its significant size and scope, retail really is dominated by small business. The majority of our members employ fewer than four people. Approximately 70% of the retail sector has sales of less than half a million dollars a year, and 89% of the retail sector has sales of less than \$2 million a year. So it is really small business we're talking about. Even though in the past we've often put the spotlight on very large retailers, our sector is dominated by small business. Retail is also Ontario's second-largest employer, with over 760,000 employees in Ontario.

With respect to Bill 144, RCC and its members have serious concerns about the impact that this legislation will have on democracy in the workplace and on the provincial economy. When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance, as mentioned in the first presentation. Obviously, RCC and its members could not disagree more.

Retailers are also deeply worried by the virtually unanimous opposition of the rest of the business community to Bill 144 and by their warnings that it will cause

a loss of jobs and investment in other sectors. This is extremely important for members to understand. This does not come from big business; this comes from all business sectors in this province.

Retailing is a consumer service. The demand for merchants' services derives from the needs and desires of people who mostly earn their living in other parts of the economy. As a result, the trade is heavily dependent on the health and growth of the economy as a whole for its own success. If Bill 144 has even a fraction of the harmful effects suggested by other businesses in this province, the impact on the retail trade will be very serious.

Moreover, we have begun to hear anecdotal evidence from several of our members that they are reviewing investment decisions based on the negative effect of Bill 144. With the potential to delay key decisions about investment and hiring, this bill could not come at a worse time, especially given the recently revised forecasts predicting slower economic growth for Ontario in 2005. RCC expects sales performance in Ontario to grow slowly this year, at a rate lagging behind the rest of the country, continuing a trend set in 2004.

In addition to lagging sales, Ontario retailers are struggling to deal with a rash of government initiatives that are hindering their ability to remain competitive. With the anticipated impact of Bill 144, this legislation truly could not come at a worse time for retailers in Ontario.

To provide the clarity and certainty that the business community requires to grow, invest and create jobs, RCC has worked as a member of the coalition that presented before you a moment ago. We have presented amendments, which are attached to our presentation, and we hope you will pay attention to them.

Now to our specific concerns and recommendations.

As drafted, Bill 144 gives the Labour Relations Board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. While public messaging by the government has stated that this power would only be used as a last resort, the legislation does not explicitly state this, nor does it explain what this means. How interesting. Instead, employers who lack resources, legal background and experience—and most of them do; they are primarily small independent businesses—may find themselves unwittingly committing acts that result in the Ontario Labour Relations Board certifying their employees, without employees having had a chance to express how they feel about being unionized. How fascinating.

There's another side of the story. If the government is determined to allow the Ontario Labour Relations Board to make the decision about certification in place of employees, the circumstances under which this power will be used must be clearly set out in the law. This is fundamental.

We recommend that this section of the bill be amended to set out the types of conduct that would attract remedial certification, provide that a full, three-person

panel of the board must agree to remedial certification before it can be ordered, and ensure in every case that employees are given at least one opportunity to cast a ballot and exercise the democratic right to express their views.

We are further concerned about the bill's proposal to give the labour board the power to reinstate terminated workers while the issue of whether or not there was just cause for the dismissal is being litigated and before their employer is ever found to have done anything wrong. We are concerned that there is no recourse for an employer if the board finds that the employer did nothing wrong in the first place. If this is not amended, there is nothing to stop unions from filing unsubstantiated claims of dismissal regardless of the merits of the case, creating a climate where employers are hesitant to run their businesses for fear of having to deal with costly litigation arising from legitimate business decisions. RCC is therefore recommending that this section be withdrawn.

We also have concerns about restoring card-based certification and are calling for the removal of this provision from the legislation. We are proposing an amendment to the provisions dealing with decertification posters to protect the rights of employers to free speech, as well as an amendment to the Labour Relations Act itself regarding the definition of "non-construction employer."

In conclusion, RCC and its thousands of members have numerous concerns about this bill, particularly the provisions permitting remedial certification. Amendments to the legislation are needed to provide the clarity and certainty that unions, employees and employers all need in order to know what is expected of them.

The Chair: There is 30 seconds each. Ms. Witmer.

Mrs. Witmer: Thank you very much for your presentation. What concerns me is the fact that the economy does seem to be on a decline and we're probably going to see a loss of jobs. What is there within this bill that would give people in your sector the most concern? I think I heard you say it was remedial certification.

Ms. Brisebois: There are several, but if we were to pinpoint one specifically, there's no question that remedial certification is a great concern. Basically, what our members, small, medium and large, cannot understand is a government thinking that taking away the right to vote is democratic. When we speak to our small members in all the regions of the province, they just shake their heads. They can't believe it.

The Chair: Mr. Kormos, please.

Mr. Kormos: Thank you kindly. Card-based certification goes back to Leslie Frost, surely one of the most unradical Premiers that the province has ever had, and we had card-based certification through till Bill 7, after the 1995 election. Where were the mom-and-pop stores that were unionized up until 1995? My grandparents were retailers and my parents were small business people. I worked in the store, like most kids did, from when I was 10 or 11 years old. I also ran a small business as a small-town lawyer. Prior to 1995, where was the orgy of union-

ization of small mom-and-pop, three- or four- or five-employee operations?

Ms. Brisebois: That was obviously not a question.

Mr. Kormos: It was a question.

The Chair: Thank you. Ms. Wynne?

Ms. Wynne: I'm just trying to understand your concern about remedial certification. My understanding is that if an employer contravenes the act, then there will be a remedy put in place. I heard you say in your previous presentation, with the other organization, that you didn't fundamentally have a problem with employees organizing, so could you just clarify? I'm confused. If you don't have a problem with a union per se, then how can you have a problem with there being a remedy if an employer obstructs an organizing drive?

Ms. Brisebois: I'm sorry. I should have introduced—

The Chair: The time is over: 10 seconds, please.

Mr. Doug DeRabbie: Ultimately, our concern is that the labour board will have too much discretionary power, so we're just looking for some clarity and for some certainty as to when the board can and cannot use its power.

The Chair: Thank you for the presentation.

I remind the members that when I say 30 seconds, that includes both the question and the answer. We keep on going over a minute, instead of 30 seconds. Please keep that in mind.

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UNITED FOOD AND COMMERCIAL WORKERS CANADA

The Chair: The next presentation is the United Food and Commercial Workers Canada. Please proceed, sir.

Mr. Bob Linton: Mr. Chairman and members of the committee, my name is Bob Linton. I'm the national communications coordinator for UFCW Canada. On behalf of the more than 100,000 members of UFCW Canada who work and live in Ontario, I would like to thank you for allowing me the opportunity to appear before you today and to share the concerns of our membership with respect to Bill 144.

Before I begin, however, I would like to take a few moments to give you some background about UFCW Canada and its membership.

With more than 230,000 members in Canada, of whom more than 100,000 are located in Ontario, UFCW Canada is one of the largest public sector unions in the country. Our members are your neighbours. They are the grocery clerk or cashier you've gotten to know. They work in meat-packing plants and hotels. Some work in nursing homes, car rental agencies and many other places. Some work as security guards, while others work in your local Beer Store. Our members are the people who make Maple Leaf hot dogs. Others make Heinz ketchup. They are working men and women. They're not rich. They don't have glamorous jobs, but by being in a unionized workplace they are able to enrich their quality of life and that of their families.

By giving you this brief description of our members and where they work, I hope you now understand that many of our members are the types of people who would be discriminated against if Bill 144 becomes law in its current form.

Approximately 50% of UFCW Canada's membership is women. The number of women in our union, combined with workers who are visible minorities, new Canadians and younger workers, clearly represents today's Canadian workforce.

Our members are lucky, however. They have been fortunate enough to obtain a job in a unionized environment. But what about the thousands of other workers in Ontario that Bill 144 discriminates against merely because they are women, a visible minority, a new Canadian or a younger worker?

For over 40 years, card-based certification was a key feature of the Ontario labour relations system. The card-based system was in effect and endorsed by Conservative, Liberal and NDP governments alike. The system is also prevalent in most Canadian jurisdictions, ensuring effective freedom of association.

The mandatory vote system, which was brought in by the former Conservative government with no independent study or consultation, now leaves employees vulnerable to coercion by employers and unfair labour practices, so they cannot fully and freely express their true wishes about becoming union members.

For the current government to restore card-based certification to only the construction sector simply does not make sense. It is discriminatory to the majority of workers in the province. Except for the construction sector, all other sectors of the economy will be subject to a vote system which will take place on their employer's property, where the employer has a daily opportunity to influence employees. Employers also have information about their employees, including addresses and telephone numbers. With their having that information and with the vote held on employer property, it clearly leaves an unbalanced system, with a huge advantage for an employer to skew the results of a representation vote.

This advantage under the vote-based system has been proven in several independent studies, two of which I would like to cite. The first is that of Professor Sara Slinn of Queen's University law school. Professor Slinn found that the overall proportion of certification applications is lower under the vote system, and it is particularly in the low-wage service and contingent worker sectors that there is a significant decline in certification applications. Slinn states that the former Conservative government's "Bill 7 had a disparately negative effect on relatively weaker employees, such that employees who may most benefit from unionization are less able to access union representation." This is clearly a discriminatory practice against women, visible minorities, youth and new Canadians who, by and large, make up that group of low-wage earners.

A 1991 study by BC Labour Relations Board Chair Stan Lanyon and Robert Edwards backs up Slinn's

findings. They stated, "The use of representation votes as a condition of certification does not further democratic rights but instead serves the interests of the employer who would wish to influence his employees' decision on the question of union representation."

In conclusion, I would like to say that although the government has proposed positive changes to the Labour Relations Act with the elimination of the workplace decertification poster and giving back to the OLRB the power to certify a union if there has been found to be undue interference or influence applied by an employer during an organizing drive, Bill 144 should be best looked upon for what is missing in the bill.

This government appears content to go down the path of the previous Conservative government by continuing to deny agricultural workers the right to freedom of association to join a union and bargain collectively. Furthermore, they have yet to ensure that those workers are covered under the Occupational Health and Safety Act.

The most glaring omission in the proposed legislation, however, is the omission of card-based certification in all sectors of the economy except the construction sector. Given the changing demographics of the workplace in Ontario, this is an issue that will not go away unless this discriminatory practice is ended.

I would like to end with a quote from the Honourable Leona Dombrowsky, Acting Premier, in the Legislature on April 21 this year. When questioned about the need for a public inquiry with respect to the linkage between then Premier Mike Harris's office and a decertification drive at a Wal-Mart store in Windsor 10 years ago, Ms. Dombrowsky stated, "I would suggest that for a government such as ours, which is committed to balance, fairness and openness, it's totally consistent with our desire to operate in a fair and balanced way to want to have all of the information before us."

I would suggest that after these consultations, the government will have ample evidence to do the right thing and bring back card certification to all workplace sectors.

The Chair: Thirty seconds each. Mr. Kormos.

Mr. Kormos: Tell us quickly a little bit more about the Wal-Mart scenario you referred to: the dirty dealing, the slush fund and the totally illegal activities.

Mr. Linton: With respect to what happened in that union certification, it came out after the certification drive that the Premier's office had paid two people to come from that Wal-Mart store to the passing of Bill 7 and the elimination of section 11 of the Labour Relations Act. They were each paid \$500 by the Premier's office, their airline tickets were paid for by the Premier's office and their hotel rooms were paid for by the Premier's office. Later on, they received a letter from the Premier, which was sent to their store, congratulating them on taking a stand. So that's—

Mr. Kormos: The slush fund.

The Chair: Thank you. Mr. Flynn.

Mr. Flynn: Just so I'm clear: The interim relief and the remedial certification are things that would go some

way toward solving some of the problems you've experienced in the past.

Mr. Linton: Absolutely. When an employee is terminated, whether or not they are participating in union activity, it puts a damper on an organizing drive, if people want to share those wishes. I can give you an example, and it doesn't even have to be with respect to that. We have a situation in UFCW with respect to Wal-Mart in Jonquière, Quebec. We had an organizing drive, and if we had had card-based certification, clearly we would have had over 55%. We had over 55% of those people sign union cards. As soon as Wal-Mart announced that they were closing their only unionized store in North America, those people decided, "I don't want my store to close," and they voted against the union.

Mr. Arnott: In a provincial election, voters are allowed to express their opinion through a secret-ballot vote, free from intimidation or any kind of oppression. Why is that not good enough for workplaces?

Mr. Linton: For one thing, do we have secret ballot votes during a provincial or federal election where the government is running the vote? It is a non-biased system, and that's what we're asking for. But clearly, when you have more than 55% of the people in there expressing their desire to join a union, it eliminates the problem that there might be undue influence.

The Chair: Thank you very much for your presentation.

UNITED STEELWORKERS OF AMERICA

The Chair: The United Steelworkers of America is next.

Good afternoon. Please start any time you're ready. There are 10 minutes in total, and there are two of you.

Mr. Najib Soufian: I will just speak for five minutes, and Judy Rebeck is going to speak for the other five minutes.

As a black person—as you can see, I don't hide my colour; I come from Africa—when I look into the room, I don't think it's representative of Ontario. Ontario doesn't look like this room. Ontario looks very diverse and very unique. We know that Ontario is the best, most diverse place in the whole world today. In this country, what I expected today was a little better than the legislation being proposed, Bill 144.

Just to share a little experience of my own, I came to this country 23 years ago and settled in Toronto. I've lived in Toronto and worked for one employer for the last 23 years, and I am still working there. My name is Najib Soufian. I live in Vaughan and work in Toronto. As a person of colour, an immigrant coming from Africa and living and working in Toronto for over 20 years, I have seen all kinds of barriers in attempting to advance my life in Canada, let alone in achieving better working conditions for myself and my family.

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Being a black worker, I know first-hand that it's hard even to find a place to live in Toronto without the help of

a union behind me. I also know what unions can bring to workers, such as equality in society and in workplaces. Before a union was organized at my workplace, we had no benefits, no wage increases, no job security, no pension, no life insurance and absolutely no say in the decision-making process in the workplace. Today, with a union behind me, not only is the company prospering, but so are my co-workers and myself.

If you are telling me today that all other visible minority groups have equal opportunities like everyone else in Ontario, you must be joking, because they don't. Let's get serious. The federal government, in 2005, which is this year, has six points toward eliminating racism in our society across Canada. Bill 144 is racism at its worse. You have given the opportunity to a select group of white men in society. If you provide a big barrier to unorganized visible minority groups in Ontario advancing in life, as Bill 144 does, it comes very short of delivering equality and fairness of justice.

Stats Canada shows, in fact, that visible minorities have better wages and better benefits where they have a union in the workplace. By not extending Bill 144 to include those who are most vulnerable in society, such as visible minorities and women, the legislation is discriminatory, racist and sexist. As the government of the day—I'm talking to the Liberal government of Ontario—it is your duty and moral obligation to protect the vulnerable. What I would like to say is, what's good for you is good for me. For every one of us, unions bring a better life, better insurance and job security.

As a casual organizer at Steelworkers, I have two plants organized in Toronto: one in Scarborough and one in North York. In Scarborough, it's an organization called Rochman Universal Doors, whose workers are 95% to 100% of Sri Lankan background, and 95% of them don't speak English. We had to find translators to go to their doors and tell them about Mike Harris's Bill 7: the 60-hour workweek and being forced to work without overtime. In the last four years, after the union organized, they're getting paid overtime and have better living conditions and a safe workplace.

If unions are good for the rest of Canadians and for the police, the doctors—every sector in society—they're good for new immigrants and new Canadians. Please don't take that away from us.

The Chair: Thank you. The next, please?

Applause.

The Chair: Please, Mr. Kormos.

Mr. Kormos: I was applauding.

Ms. Judy Rebick: My name is Judy Rebick. I'm not a member of the United Steelworkers of America, but they asked me to appear as an expert in women's equality and also in democracy. I just finished a book on the history of the women's movement, and my previous book was called *Imagine Democracy*, so I have expertise in both fields.

What I want to say, first of all, is a fact that isn't well known, which is that the number one factor in reducing the wage gap is unionization. That is, a woman who is

unionized is more likely to make much closer to a male wage than any other factor, including education. Unionization is a critical factor in women's economic equality.

Secondly, the pay equity legislation, which our previous Liberal government brought in, has made a huge difference in women's wage levels only in the unionized sector. We've seen over the last 10 years—it wasn't meant to be that way, but in effect the only women who have the power to organize to achieve pay equity are in unionized sectors. So in both factors, unionization is critical to women's economic equality.

So now you bring in this Bill 144, and restrict it to one of the most male-dominated work sectors. Construction work is almost entirely white male. It's extraordinary. The only sector I know of that's more male-dominated than the construction sector is the firefighters, and they're getting better. The construction sector is not getting better. What you're doing, in effect, with Bill 144 is producing a bill that discriminates against women, and I believe it would not stand up to a charter challenge. If this bill was on the books at the time the charter was brought in—and we're at the 20th anniversary of the charter, also brought in by a Liberal government—it would be thrown out under the charter when you did the review of your legislation. It's patently discriminatory.

You must extend this bill to all sectors if it's not going to be discriminatory. Otherwise, you're passing a bill that is discriminatory against women and against minorities, as my colleague has said. I really urge you—I'm going to stop early because I'd like to be able to answer questions—to send this bill back. If you believe—and I believe—that card-check is the right way to go for the construction industry, then let's expand it to the whole of the workforce. That's what we need in this province, and I hope that that's what this committee will do.

The Chair: Thank you. We have 30 seconds each. Ms. Wynne?

Ms. Wynne: Thank you, Judy, and thank you very much, both of you, for being here.

I understand your point about card-based certification. I just want to ask about the other pieces of the bill: the remedial certification, the decertification posters, the interim reinstatement. Can you just comment on those in terms of their benefit to workers?

Ms. Rebick: The message I want to bring here is that anything that makes it easier to unionize is a benefit to women's equality, so anything that makes it easier to decertify is not.

Mr. Arnett: Ms. Rebick, thank you very much for your presentation; I appreciate it. There isn't a lot of time, but I would just like to ask you as well, what is wrong with having a secret ballot vote for a union certification decision?

Ms. Rebick: The thing that's wrong is that it's not like—I heard you talk earlier about the secret ballot in voting. With a secret ballot in voting, I don't have to do it in front of my boss. Basically, the employer, who has all the power in the workplace when there's no union, has time to intimidate employees. That's the problem, and they use that time.

Mr. Arnott: But it's a secret ballot.

The Chair: Mr. Kormos?

Mr. Kormos: Go ahead, brother.

Mr. Soufian: I just want to add to that point that there is something wrong with that. It opened the door. The remedy part that the member was asking about—basically, to remedy means that something is wrong. If there is nothing wrong in the first place in a card-based certification, why would you need the remedy in the first place? Do we have to wait until somebody attacks and opens the door, and then we're going to take you after the emergency situation? That opened the door for so many things, particularly for people like me who don't speak better English, and people who don't speak English at all. It will be easier to make them choose their livelihood or the union: What's it going to be? I tell you one thing, as an immigrant: I'd rather go with my employer than lose my job.

The Chair: Thank you very much for your presentation. We're right on time on this one.

1650

OPEN SHOP CONTRACTORS ASSOCIATION

The Chair: The next one will be Open Shop Contractors Association, please.

Mr. Arthur Potts: Thank you, Mr. Racco and members of the committee. Thank you for this opportunity to speak. My name—

The Chair: We have a meeting going here. Can we please have any other meetings outside?

Please proceed, sir.

Mr. Potts: I come from a large family. I'm used to being ignored.

Ms. Wynne: We're listening.

Mr. Potts: Thank you very much, Ms. Wynne.

My name is Arthur Potts. I'm a vice-president of the Open Shop Contractors Association. Our president, Phil Besseling, was listed to speak here as well. He's going to see you on Friday in Kitchener. Mark Baseggio was here earlier speaking with the Coalition of Democratic Labour Relations.

Our association was formed in about 1990 by a group of Niagara Peninsula contractors who were upset about the fact that they were being refused opportunities to bid on jobs because their employees had not freely chosen to join a union or a particular trade union. We believe that employees' choice of whether to join a union or not—and it is the employees' choice—should not be a determining factor in awarding contracts, especially where public money is being used. As taxpayers, open shop contractors understandably do not want their hard-earned tax dollars being used for construction jobs that only benefit their competitors.

We now represent contractors across the GTA and the province of Ontario. We've grown to be really the only credible voice of the nearly 70% of the construction industry that is not unionized. Notwithstanding that a

number of our members do have collective bargaining relationships with trade unions, they just do not believe that should be a deciding factor in whether they should be able to contract or bid on certain jobs.

We will address three areas of the bill that we believe need fixing from construction's perspective. We are members of the coalition you heard from earlier, and we support their point of view in all the issues they've brought forward already. We're going to address card-based certification—we've heard a lot of discussion about that so far—the “non-construction employer” definition, which was touched on, and another area, which I'm going to call, “Who gets counted?”

We're going to be asking this committee to propose amendments to Bill 144 that (1) guarantee a vote in every certification application, (2) will remove municipalities from the construction sections of the Labour Relations Act, and (3) will ensure that all employees on a contractor's payroll have an opportunity to vote or be counted in membership cards counted in a certification application.

On the card-based certification, much of the debate we've heard here today argues that because the card-based certification system has been used since the Labour Relations Act was founded, there will be few consequences by reintroducing it. If it was good enough for every Ontario government until the last administration, then, the argument is, it can be effectively used now. This is an extremely false premise. Times have changed. The card-based certification process has become extremely complex, costly and cumbersome in the province of Ontario, and this is precisely why it was removed.

A card-based system relies on an employee's right to be able to change his or her mind by signing a petition withdrawing their support. You heard Mr. Dillon talk a bit about the petitions earlier on. This is an absolutely critical piece of a card-based certification program. Certifications in Ontario used to get tied up for months debating the legitimacy of a petition, and then the union would inevitably bring a counter-petition. The certification process dragged on interminably and was very, very costly.

We predict with confidence that reinstating a card-based system will result in the revival and the excessive use of petitions and counter-petitions and lead to very acrimonious labour board proceedings, which won't benefit any of the parties, including the government. All these issues around petitions were completely eliminated by a representation vote in every case, and the fact that the vote was a quick, expedited vote, within five days of an application, gave the employer absolutely no time to mount any kind of credible campaign. It could hardly be described as a war on the employees, as we've heard it characterized here. With an expedited vote, these issues go away. We can deal with the thing.

If, in fact, unions are not winning as many applications as they once were, it has nothing to do with the process; it has to do with the fact that they don't have the support. Times are changing. They just don't have the

support they may once have had, and I'm not going to argue the demographics of why that is.

We also have the concern that a threshold of 55% for a card-based vote is too low. If the union is going to rely on card-based evidence, which is simply not as reliable as a secret ballot vote, then a much higher threshold, such as is used in other provinces, is appropriate. I would draw your attention to the Manitoba NDP government. When they reinstated, they raised the level to 65% to at least demonstrate the true wishes of the employee.

I also want to talk about the "non-construction employer" definition. This matter is not specifically addressed in Bill 144, but it should have been. Twice before, the Legislature of this province has made amendments to the Labour Relations Act, defining a "non-construction employer." It was an attempt to remove municipalities, school boards, banks and retailers from the construction sections of the Labour Relations Act. For the most part, employers, who had been caught up in what is best described as a technical loophole in the old act, had been successful in terminating their bargaining units with construction trade unions, where they clearly did not belong.

However, the labour board has very narrowly interpreted the current definition of "non-construction employer" such that only two municipalities and just a few other employers in the province continue to be stuck with this kind of position. It has created such an incredibly unbalanced, unlevel playing field for two municipalities that they can't tender contracts on the same footing as other municipalities in the province. These employers are not construction contractors. They are the owners of the construction, and they contract out the work to construction companies. They do not belong to or participate in the construction sector bargaining tables. They do not bid on performed construction work for others. They should simply not be covered by the act.

Take, for instance, a situation in Sault Ste. Marie. They went out on a pre-qualification bid for a significant upgrade to a water treatment plant, and they could not get a single contractor to come forward and respond to their pre-qualification tender. This is because of the restrictive tendering they face. In Mississauga, where they do not have restrictions, during a similar pre-qualification process, many contractors came forward. Of the five contractors who were pre-qualified to bid for this very important work, not one of them is eligible, due to the restrictions, to work in Sault Ste. Marie.

Similarly, in the city of Toronto, it's becoming increasingly more difficult for the city to find contractors who have all the requisite collective agreements to bid on and perform the work required. We know this is costing the city of Toronto tens of millions of dollars a year, because they are not getting enough contractors to bid on the jobs to ensure that they get the best prices from the best contractors available.

It's also extremely unfair. You'll recall that when the city of Toronto amalgamated, hundreds of contractors representing thousands of employees who'd made their

living working for Etobicoke, North York and Scarborough were suddenly told, "You need not bid on city work," because they'd inherited the old restrictions from Metro in the city of Toronto. These contractors had to go off and rethink their entire business to find other work.

We believe it's a simple and very necessary fix. We ask this committee to make the changes required to the definition of "non-construction employer" to allow these organizations to terminate their bargaining relations with construction trade unions.

The last item we haven't heard anything about so far, but I think it's extremely apropos to the discussions we're having: Who gets counted? Bill 144 proposes a new section 128.1 to deal with an application for certification without a vote; i.e., the membership-card-evidence certification.

The section codifies a practice that has developed over the years at the labour board that we believe is fundamentally undemocratic and should be changed rather than entrenched in the legislation. When a trade union applied for certification in the construction sector, the board has ruled that only employees employed on the day of the application are considered for the purposes of counting membership evidence and get the opportunity to vote. This means that if a contractor has 10 employees working one day and two the next, and the trade union chooses the second day to make an application, only those two employees get the chance to vote and only those two employees' cards are counted. We think this is fundamentally wrong. Even if all 10 of the employees were to work the following day, it's still just those two employees who get to choose.

Open shop contractors have a very stable base of workers. These are the ones who will be disenfranchised if you take away their vote and if you don't allow them to vote in a situation like that.

We would ask that significant changes be made to Bill 144. Our three requests are that you not reinstate card-based certification, that you amend the definition of a "non-construction employer," and that all workers on an employer's payroll should be allowed to have their membership card evidence counted and the chance to vote on an application.

The Chair: Thank you for your presentation. There's no time for questioning

1700

ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION

The Chair: We'll move on to the next presentation, the Ontario Secondary School Teachers' Federation.

Mr. Ken Coran: Thank you, Chair. Rhonda Kimberley-Young, our president, sends her regrets. She's in Ottawa today, so I'm substituting for her.

Our organization, the Ontario Secondary School Teachers' Federation, represents approximately 50,000 members across Ontario. They include public high school teachers, occasional teachers, educational assistants, con-

tinuing education teachers and instructors, psychologists, secretaries, speech-language pathologists, social workers, plant support personnel, attendance counsellors and many others in education.

I would also like to take this opportunity to thank the committee for allowing me this time to comment on Bill 144, the Labour Relations Statute Law Amendment Act. As you are all aware, the intent of Bill 144, according to the government, is "to restore fairness and balance" to Ontario's labour relations system. The sections of the bill that are of greatest importance to education propose changes in three key areas: union decertification, union salary disclosure and the restoration of powers to the Ontario Labour Relations Board.

I feel it is important to applaud the government for the positive aspects of this proposed legislation before focusing on the areas that deserve greater attention and further deliberation.

The proposed amendments to sections 4 and 5 of the bill, which will repeal the requirement for unionized businesses to post information outlining the procedures for union decertification, are most welcome. In 1995, when the previous government enacted the legislation, there was no need for the provision which required the posting of this material. Working individuals could already obtain information about the certification and the decertification process from the OLRB. The existing law was both provocative and one-sided and served only as a vehicle for the destabilization of the labour movement. Interestingly, there was no corresponding requirement to post certification information in non-unionized workplaces.

Section 6 of the bill will repeal section 92.1 of the act, which deals with trade union salary disclosure. Many labour organizations already have a requirement for salary disclosure in their constitutions. Again, the existing provision is provocative and one-sided. It does not contain an equivalent requirement for companies to disclose similar information about management.

The Labour Relations Act, 1995, already requires unions to provide a copy of an audited financial statement for the previous fiscal year to any member requesting it. It also requires that unions that administer vacation pay, health or pension funds for union members must file an annual financial statement with the Minister of Labour that discloses salaries, fees and remuneration charged to the fund. Any member may request a copy of that statement from the administrator of the fund. These sources of information render the salary disclosure provision unnecessary. It requires resources to be expended in obtaining information when they could be better used elsewhere. With its elimination, it will restore respect to the various labour organizations.

The proposed legislation will move to restore the OLRB's long-standing historical powers to address the worst labour relations. It restores to the board the power to certify a union where an employer has breached the province's labour relations laws during a union organizing campaign. The remedy would be reserved for the

worst breaches and worst situations. The proposed legislation attempts to strike a balance. It would also give the board the power to dismiss an application for certification where a union violates the act during an organizing campaign in circumstances where no other remedy is sufficient.

When the previous government removed these provisions, it removed the only effective remedy for the worst breaches and the worst cases. Not only did it leave such cases without a potential meaningful remedy, but it sent a clear signal to the labour relations community that certain conduct was not viewed to be as serious as it should have been. That signal does not foster productive and harmonious labour relations and does not contribute to the overall prosperity of Ontario.

The revisions to section 98 will effectively restore the board's power to reinstate on an interim basis workers who are fired or disciplined during a union organizing campaign because they were exercising their rights under the act. Restoring the power to order interim reinstatement will enable the board to respond to any potential harm caused by the dismissal in a timely way, pending a final review of the matter. This allows for proper due process to occur when there is a disagreement between employer and employee.

In regard to the issue of card certification, this bill is clearly lacking. In the period between 1950 and 1995, a union certification system based on membership cards was the norm. Automatic certification could take place if a union signed up more than 55% of the bargaining unit.

This older practice will now only be applied to the construction trades. In this respect, the revisions are discriminatory. They will perpetuate an environment of low wages and poor working conditions for the most vulnerable in the workplace, namely, women and new immigrants. For this reason alone, card certification should be made available to the full labour community.

We believe we have been quite complimentary in addressing this new legislation. I have outlined the areas which deserve comment in the existing bill. However, what is missing from this legislation also deserves comment.

The bill does not include, but should, sections that can deal with scab labour. With this absence, the labour community will continue to go wanting in their endeavours around negotiations. Across Canada, around 30% to 35% of workers are covered by legislation that prevents employers from replacing them with strikebreakers if they are engaged in a legal strike or lockout, without stifling economic growth.

If the government chose to augment this legislation to include both a redress of the sections involving card certification and an inclusion of anti-scab provisions, we would realize a more complete address of the labour community's concerns. In this event, we would have before us admirable legislation.

In conclusion, I want to commend the government for a dramatic departure from the previous government in the area of labour relations. This new path will lead to

greater fairness and balance in this portfolio. Further, this legislation has the ability to encourage more productive relationships between employer and employee groups. As well, these changes will serve to instill long-term stability in the workforce and help promote a more prosperous Ontario.

The Chair: Thank you. Mr. Kormos, 30 seconds.

Mr. Kormos: Thank you very much for your presentation. You understand that if this bill had card certification for every worker, I would be one of this bill's greatest proponents. The problem is that I'm hard pressed to put myself on record as endorsing a bill that denies card certification to the vast majority of workers.

I listened to two operating engineers—I don't know if you were here when they made their submission—talk about the dirty tactics that their bosses used when they were trying to organize a union. That was as potent an argument as any for card certification in the building trades and, quite frankly, for every other worker in this province. That's the dilemma we've got.

Mr. Coran: And that's exactly why I added that paragraph to state exactly that.

Mr. Flynn: Mr. Coran, thank you for that presentation. It was probably one of the most balanced we've heard, and I appreciate that.

Excuse my ignorance. Does OSSTF organize any other members outside of teachers?

Mr. Coran: Oh, absolutely. I started my presentation with the fact that we have 50,000 members. We have educational assistants, speech-language pathologists, social workers, child and youth workers. It goes on and on.

Mr. Flynn: OK, but they're all in the teaching—

The Chair: Thank you. It's 30 seconds in total. Sorry.

Mr. Flynn: No problem.

Mr. Arnott: Thank you very much. You're here on behalf of the high school teachers. We appreciate your presentation—

Mr. Coran: Not just high school teachers—and some other educational workers.

Mr. Arnott: You said that "Many labour organizations already have a requirement for salary disclosure in their constitutions."

Mr. Coran: That's correct.

Mr. Arnott: Do the high school teachers do that?

Mr. Coran: Yes, we do.

Mr. Arnott: For how long have you done that, and how is that disclosed to your members?

Mr. Coran: It's part of our audited financial statements, which are available at the member's request.

The Chair: Thank you for your presentation. We are within the time.

GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: The next one is the Greater Toronto Home Builders' Association.

Mr. Jim Murphy: Good afternoon. My name's Jim Murphy. I'm the director of government relations for the Greater Toronto Home Builders' Association, a 1,300-member association. For those of you who are not aware, the Greater Toronto Home Builders' Association represents homebuilders, professional renovators and associate members operating within the greater Toronto area. We exist to educate, to advocate and to be the voice of the residential construction industry.

From an economic point of view, new homebuilding and renovation in the greater Toronto area currently accounts for approximately 240,000 jobs, \$10 billion in wages paid and approximately \$18 billion in contribution to GDP. Our industry pays more than \$5 billion in taxes to all three levels of government, federal, provincial and municipal.

Beyond the statistics, we fulfill the hopes and dreams of up to 40,000 homebuyers annually, be they young urban professionals buying a condominium in the city or newlyweds starting a family in a new home in the suburbs.

We have been actively involved in discussions surrounding the collective bargaining framework for the GTA residential construction sector since the strikes of the summer of 1998 that paralyzed our industry.

Just by way of a little history to perhaps provide some information as to why some of the aspects of this legislation are in place, in 1998 new homebuyers endured no less than six strikes, with at least one trade on strike at any given time, for a total of 135 days, nearly five months, from spring to fall.

Following those harmful strikes, GTHBA, along with other groups—Richard Lyall's here from ResCon, whom you'll be hearing from tomorrow—led a concerted advocacy effort to bring about changes to the collective bargaining system affecting residential construction in the greater Toronto area.

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In the spring of 2000, the previous Conservative government introduced Bill 69, which became effective for the 2001 collective bargaining season. This legislation included four very important provisions for our industry:

(1) It limited strikes in the residential construction sector to 46 days;

(2) It allowed for an arbitration process if there were no agreements within that time frame;

(3) It established a common expiry date for all residential contracts of April 30; and

(4) It established a common length of contract of three years, so 1998, 2001, 2004, 2007.

The result of that legislation was more certainty for the industry and, more importantly—we forget this in all the discussions between labour and management—for the third party, which is the consumer: the 40,000 new home buyers who purchase homes in the greater Toronto area each and every year.

Bill 69 worked well in the 2001 collective bargaining season. All labour contracts except one were negotiated

within the 46-day period. The legislation was so successful that the government reintroduced the provisions of the legislation for the 2004 collective bargaining season; that was in Bill 179. Last year—we just went through collective bargaining again on the residential construction side—all contracts were negotiated within the 46-day period.

I should just mention at this point that two of those provisions, the 46-day period and the arbitration, were features of each round of collective bargaining. They were not permanent features of the legislation, either Bill 169 or 179. The last two provisions, the common expiry date of April 30 and the common length of contract of three years, were both permanent provisions of that legislation.

Bill 144, the legislation before this committee, makes the four provisions I've just referenced permanent. That's contained in section 9 of the legislation you're reviewing. We congratulate and thank the government for including these provisions and making them permanent. The new home buyer will be the benefactor of these important and necessary changes. As I say, they'll come into place for 2007, 2010 and every three years out.

However, while GTHBA supports the collective bargaining framework for the residential construction sector in the greater Toronto area, we strongly object to another provision in Bill 144; namely, the elimination of the private ballot for union certification in the construction industry. I've attached a couple of letters that our two most recent presidents have sent to Minister Bentley, the Minister of Labour. One is dated January 6 and the other is previous to that: July 20 of last year. As noted in our January 6 correspondence to the minister, we are strong supporters of the current certification process, which mandates a private ballot. Transparency must be maintained during union organizing efforts. We recommend that the card-based system included in the legislation be dropped for the construction sector. The private ballot should be maintained.

I want to thank you for your time, and I'd be delighted to answer any questions you may have.

The Chair: Thank you. There's about one minute each.

Mr. Flynn: Mr. Murphy, it's good to see you again. Your membership would be both union and non-union; is that correct?

Mr. Murphy: Yes.

Mr. Flynn: The relationship between the building trades and the employers is sometimes among the best that I've seen in the country. Would the opinions that you've expressed here be the opinions of the union builders as well?

Mr. Murphy: We've dealt with both letters at our executive. Perhaps I could just explain. In the greater Toronto area, residential construction is, by and large, unionized. Certainly high-rise construction, condominium development, is 100% unionized. On the low-rise side, you have more non-union. Outside of the greater Toronto area, you have a lot more non-union in the rest

of the province. This is a major issue outside of the Toronto area. On the ICI side, as you well know, it's unionized across the province, and you have collective agreements across the province.

So I would say yes. We went through our executive, which has representatives who are both union and non-union, and they were supportive of the letters.

Mrs. Witmer: Thank you very much for your presentation. You've said here that the private ballot should be maintained. I guess I'd like to ask you why you think that is important for the employees.

Mr. Murphy: I think there are a couple of reasons that our executive would say. One is just democracy: People should be able to vote freely, without hindrance. I think the second concern that members have expressed is that during the card-based certification process, there can be intimidation. There can be a process where workers are cajoled, intimidated, or perhaps forced to sign cards. They may do that when they have a private ballot, because then they realize they have a second chance. They can say "yea" or "nay" to the union. So the first time you go through, you can still—in order to get that percentage to require the ballot, they may be less reticent. Now they won't have that second chance in terms of the private ballot.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you kindly, sir.

K.G. BAIRD GENERAL CONTRACTING

The Chair: The next presentation is K.G. Baird General Contracting, please.

Mr. Keith Baird: I've brought a colleague of mine up with me, Ralph Mooney.

The Chair: Please go ahead.

Mr. Baird: I would just like to begin by thanking the standing committee for the opportunity to speak before you. My name is Keith Baird. I have been in business since 1976, and currently am president of a small construction and home-building company.

These proposed reforms are not identifying the concerns that I feel very strongly need to be addressed in this province. I would like to speak briefly about a personal experience that affected not only me, but a number of my employees.

In 1994 I bought the assets of the Architectural Aluminium company from a court-appointed receiver. It was a company that was closed down. There was an advertisement in the paper and I felt like a change in direction in business. I contacted them. It was a business that was supplying commercial jobs, and I was aware of it. Anyway, it was engaged in the fabrication and sale of aluminum products and also did contract glazing in Ontario. I knew that the outside workers had been unionized and that the inside workers and fabricators were not. I was not concerned about the outside workers, as my whole object was to take the manufacturing side of

the business and expand the existing dealer network and exports to other countries.

Approximately a year after setting up a new plant, hiring employees and beginning manufacturing as a sole proprietorship, the president of the local chapter of the glaziers' and painters' union came to my premises and said he was using secession rights on the assets to certify my employees under the old collective agreement. You can imagine my horror at finding that, although never acted on or enforced, the collective agreement of Architectural Aluminium Ltd. covered the plant employees as well. Not one employee had asked for or wanted a union. I went to a labour lawyer in Toronto, who advised me that the union had my employees and myself over a barrel, as they had the legal right to enforce their collective agreement, unasked and unwanted. The only democratic right we had was to be unionized.

Several of my employees and I were in a very serious position. Because of our faith, we could never partake in a union agreement. As one who had every aspect of his life governed by Scripture, my conviction before God is that the employment of union labour or membership in a union is directly against the divinely appointed relationship of master and servant as set out in the Holy Scriptures. I've used two Scriptures as examples that you can look up at your own convenience. We also believe that it's imperative for a master to pay a servant what is just and fair, which is the Scripture. Also, II Corinthians 6:14 states, "Be not unequally yoked together with unbelievers."

In accordance with this belief, I, along with many other Christians, have refrained from membership in or contribution to bodies such as professional associations, trade unions, trade associations, group pension plans, group insurance, ownership of shares in publicly traded companies or any such activity. This should help make it clear that trade unions have not been singled out for attention; the principle is pervasive in my life, touching many areas. We don't have a common link in housing. We won't have a joined house or joined business premises. We keep ourselves separate from the world and any connection.

The employees therefore hired a lawyer to represent their interests, but the law was clear: We had to submit to a collective agreement. Words cannot express to this committee the turmoil and stress created by this on all of us.

After expending tremendous amounts of work and money to get the company this far, I had two options: I could leave my Christian fellowship, leave my family and friends, and enter into a union agreement against my own convictions and conscience, or I could close my business, causing loss of employment and financial hardship to my employees, who were my friends, and to my own family.

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I was shown mercy at the subsequent Ontario Labour Relations Board hearing—we had an arbitrator there with my lawyer, the employees' lawyer and the union

lawyer—when I explained my conscience regarding unions and that this would become a charter issue that would go to the Supreme Court of Canada. If I lost at that stage, I would have no alternative but to close the business. The union president had to make a business decision. Faced with a large financial outlay with no prospect of a return, the application was withdrawn.

I would like to mention that it was a small local. It would have caused hardship for that local. If it was a big union organization, I think it would have been a different story.

I would like to mention to this committee that both Australia and New Zealand, which I'm sure the government would view as having progressive labour legislation, have labour laws in place that make provision for employers with under 20 employees and who have the same convictions as myself to be exempt from compulsory collective agreements.

I look to the standing committee on social policy to clearly recommend exemption from collective agreements for both employers and employees when their conscience, because of religious conviction, does not allow membership in trade unions. This law would certainly be supported by the Charter of Rights and Freedoms and would prevent anyone else from having to go through the pressure of completely unwanted union activity.

I would like to emphasize that my reason for being here is that we need a conscience provision in this province. As an aside, so as not to detract from what has been said regarding the need of a clear provision for conscience in Ontario labour legislation for every employer and employee, we need to take a quick look at the construction industry.

I am in the construction industry, as I mentioned, and I've talked to subtrades. Many of them complain about being constantly harassed, threatened and intimidated to join a union. Over the years, I've had several examples, in this regard, of what we would consider criminal activity in this province. One drywall contractor told me his men have had 28 tires slashed in an organizing attempt, to get them to sign membership cards. These employees were followed to their own homes. The next day, their vehicles were vandalized. There should be an inquiry—I think that would be the word; we hear about the Gomery inquiry—into the construction industry to reveal what is really going on and, if this is criminal activity, how we can bring about legislation to stop it.

I would plead with this committee not to take away the democratic right of all workers to a secret ballot away from all threats of coercion. Let's represent the interests of workers, not just unions, and help support democracy in the workplace. A government needs to be a terror to an evil work, not a supporter of it. Let's make laws that are clear, and not leave it up to a partisan labour board. I am relying on this committee to respect and carry out these recommendations, especially in regard to conscience.

The Chair: There is no time for questioning, but thank you for your presentation.

CANADIAN LABOUR CONGRESS,
ONTARIO REGION;
TORONTO ORGANIZING FOR FAIR
EMPLOYMENT

The Chair: The next presentation is from the Canadian Labour Congress, Ontario Region.

Ms. Winnie Ng: Good afternoon. My name is Ms. Winnie Ng, regional direct for CLC. With me is Deena Ladd, coordinator of Toronto Organizing For Fair Employment. We'll share the time.

The Canadian Labour Congress is the central national body representing 3.2 million unionized workers across the country. In Ontario region, we work closely with the Ontario Federation of Labour, the affiliates and the 50 labour councils locally across the province to advocate on behalf of working people.

For the deputation today, I would like to focus on card-check certification, and speak to it as someone who joined the labour movement in 1977 as a union organizer, and who has worked primarily with immigrant women workers and workers of colour in the garment industry and in the hospitality sector.

Card-check certification was enacted in 1950 by the Conservative government. For more than half a century, workers expressed their wish to join a union by signing a union membership card. When the union had more than 55% membership evidence for that particular workplace, they applied for certification. If it was between 45% and 55%, the union could apply for a vote. This was done for good reasons: to reduce the fear factor and to eliminate employer retaliation.

When workers join a union, it's usually not just for the possible wage increase, but for the desire to be treated with dignity and respect. They see the union as a means to end discrimination, favouritism and differential treatment; in short, not to be treated as second-class citizens.

When workers put their signatures on membership cards, it's done with much care and courage, and should not be taken lightly. A lot of the time it's harder to convince a worker to sign a card than to cast a ballot. They vote in a secret ballot because their identity has been out in the open. Usually it's done after prolonged discussions involving the workers along with their families. To me, the signature is an authentic and accurate indication of the wish and courage to join a union. The card-check certification process protected workers from intimidation, harassment and reprisal from employers. It was a fair system.

In 1995, the Harris government's Bill 7 shifted the balance very much toward the employers. The vote is basically asking the workers to jump through hoops and make the same choice twice. The week prior to the vote becomes an open season for employers to resort to bribery and/or retaliation in their all-out anti-union campaign. For most workers—excuse my language—it's a week from hell. It's a systemic barrier put in by the Harris government to erode the fundamental right of freedom of association.

Therefore, we're very pleased that the new government has recognized the unfairness and proposed to restore card-check certification for workers in the building trades. It's about time. However, we are asking you to go one step further and restore the same right to all workers in Ontario, which they had exercised from 1950 to 1995.

Workers in Ontario do not need a two-tier union certification system. In this new globalized economy, one in every four workers in Ontario is in a precarious temporary work arrangement. There is a growing number of workers who are in transient, temporary work sites not unlike the building trades and construction workers.

The latest StatsCan data have shown that by the year 2016, one in every five Canadians will be a person of colour or member of a visible minority. Studies such as Grace-Edward Galabuzi's report on racialized poverty point out that workers of colour are, on average, paid significantly less and have less job security than other workers. The growing income and opportunity gaps are raw indications that some members of our society are more vulnerable to discrimination in the job market.

The labour force survey from StatsCan has also consistently illustrated that unionized workers earn more than non-unionized workers. Just as an example, in 2003, on a national basis, the hourly wage difference between a unionized woman worker and her counterpart in a non-unionized workplace was \$5.39. When we know that unionization can raise the floor and improve the lives of working people and their families, why won't we do the right thing?

The improved wages of unionized members go back to the tax base of the local economy. It is therefore incumbent upon a government to have both the political will and the courage to address some of the inequities. Restoring the right of card-check certification to all workers in Ontario is the only fair thing to do.

I'll turn it over to Deena.

Ms. Deena Ladd: I'm from Toronto Organizing for Fair Employment. We're a workers' centre that works with non-unionized workers who are predominantly in precarious types of employment. I'm talking about temporary agency workers, contract workers, on-call, casual, independent contractors—basically those jobs that are becoming the norm in today's workplace. In fact, 37% of workers in Canada are now in these forms of non-standard jobs.

At our centre, we receive hundreds and thousands of calls from workers across the city who call with workplace problems and violations of their employment standards.

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Bill 144 has recognized that the reality facing workers in the construction industry, which includes instability and insecurity of work, poor working conditions—especially health and safety and injuries on the job—and the transient nature of moving from job site to job site, needs card-based certification to support attempts to form

a union, and that having a vote in addition to cards does not provide fairness and choice in the workplace.

What I would say to you is that those same conditions I've mentioned in the construction industry are reality facing workers in many sectors and for many non-unionized workers in Ontario. StatsCanada, for instance, reported in 2001 that there are close to 450,000 workers in the Toronto census metropolitan area who are working in precarious types of employment. Ontario has the largest number of temporary agencies. In Toronto alone, we have 500 to 600. This reality means that many workers are moving from temp assignment to temp assignment. Workers are on contract and afraid to speak out. Workers from many sectors—from health care to office work to manufacturing—are working alongside regular workers at lower wages, no benefits and no security of work. It's common knowledge that 90% of workers who come to the Ministry of Labour employment standards branch only do so after they've lost their jobs. In fact, that's one of the reasons why the minister himself has created the Minister's Employment Standards Action Group: to look at the poor working conditions that are facing workers. I think this shows us that protection is needed for workers who are in precarious work.

I just want to finish off by saying that only a couple of weeks ago I was talking to one of our members who has been a temporary agency worker at the same assignment in the same workplace for nearly three years and was told to not come in to work on the day that there was a vote taking place for union certification. For those workers, disobeying that order means losing their assignment; it means not being part of a union, even if that's their wish.

I would urge you to extend card-based certification to all workers, as the working conditions and the reasoning that has led you to put that in for construction work are the norm and the reality for workers in many sectors and in many of the workplaces that exist today in Ontario.

The Chair: There is no time for questioning, but thank you for your presentation.

IRONWORKERS, LOCAL 721

The Chair: Next is the Ironworkers, Local 721.

Mr. Mike Dix: Good afternoon, ladies and gentlemen of the committee. Thank you very much for hearing me today. My name's Mike Dix. I'm with the Ironworkers, Local 721; I have been for 25 years.

Bill 144, and the amendments it contains, is of the greatest importance to all the working people and families of Ontario. For too long have the governments of Ontario flagrantly played politics with the Labour Relations Act. This crucial piece of legislation, amended and re-amended by the former NDP and Progressive Conservative governments, must be restored in a meaningful way to a form in which it can protect the rights of working people to health, safety and choice.

Card-based certification has been an integral part of the Labour Relations Act since its inception during the

massive expansion of post-war industrial unionism in the 1950s. However, the notorious Bill 7 of the Harris Conservatives targeted, among other things, card-based certification. This vital tool was one of the first casualties of the so-called Common Sense Revolution. However, it is obvious that this amendment made little sense, especially to the working people of this province.

Professor Sara Slinn of the Queen's University faculty of law found during the course of her research that the removal of the card certification and introduction of the mandatory vote system in Ontario in 1995 had a very large negative impact on the chances of success for certification applications made in the province. The average certification application had about a 22% lower chance of succeeding under the mandatory vote system than it would have if the same application had been made under the card system of certification. Professor Slinn goes on to conclude that the mandatory vote appears to have the effect of reducing access to union representation to all workers.

I believe that by taking down this unreasonable barrier to organization—billions of dollars that are currently lost to companies operating within the underground economy and utilizing uncertified labourers—the landscape of labour in Ontario as a whole would be improved, the Workplace Safety and Insurance Board would become stronger and more comprehensive, and we would be one step closer to improving the standards of workplace health and safety of all Ontarians.

The right to choose whether or not to be affiliated with a trade union has always been a pillar of the Labour Relations Act and, as such, Bill 144 does much to repair the damage done by previous administrations.

The rights to health, safety and choice are not Liberal, NDP, Progressive Conservative or even trade union values; health, safety and choice are Canadian values. I know that, across all party lines, through all the politicking, this is something we can all agree on and move forward with.

Thank you very much for your time.

The Chair: Thanks very much for your presentation. We have at least a minute each. We'll start with Mrs. Witmer.

Mrs. Witmer: Thank you very much, Mr. Dix, for your presentation. Basically, what is it you're asking for?

Mr. Dix: That the policy be moved through, moved on. We would greatly appreciate that, and I think that it would be beneficial to all working people, all families, whether or not they are part of the construction industry. It keeps a fair, level playing field out there. I firmly believe, wholeheartedly, that it upholds a basic standard of living for Canadians.

Mrs. Witmer: We heard the last speaker say that sometimes when there's not a secret ballot vote, there is intimidation and harassment of workers, not just in the workplace but also at home. Would you agree that that does sometimes take place when you have automatic card-based certification?

Mr. Dix: I wouldn't want to agree with that. That has been said from both sides of the table. So whether or not you would perceive it as such—

The Chair: Thank you. Mr. Kormos?

Mr. Kormos: Thank you, Brother Dix. You know where I stand on the issue of trade unions. I think they're the greatest thing that ever happened to not only working people but the economy of this country, of the Western world, in building that high-wage economy. These are the people who pay taxes, you and your members, after you fight to get better wages.

I agree with you about Bill 7. You know how hard we fought Bill 7, tooth and nail, revoking card-based certification for all workers.

My problem is this: I don't begrudge any worker card-based certification. What do I say to the tens of thousands of workers who aren't going to receive card-based certification as a result of Bill 144, with no promise that it's coming a year from now? That's the problem. What do we say to those women and men? You heard two sisters who are out there organizing some of the hardest-to-organize workers: people who work out of their homes, needle trade workers, contract workers. What do we say to those folks? Because you're right about card-based certification and you're right about the union. What do we say to those tens of thousands of workers, the Wal-Mart workers who are going to get beat up on—you know it, right?—in that week between the card signing and the vote? We saw it again just a little while ago.

Mr. Dix: I firmly believe that, with the successful passing of this bill, in time, we'd be able to help our brothers and sisters in other areas.

Mr. Kormos: Brother, I hope you're right.

Mr. Flynn: Thank you, Mr. Dix, for coming today. It's really appreciated. One of the reasons that is used for extending card-based certification to the building trades is mobility. From a job-site sense, how long would a typical contract last on a particular job site for the Ironworkers?

Mr. Dix: It varies; it really does. You could be a week; you could be two weeks. It varies depending on the size of the job itself.

Mr. Flynn: Would it be unusual for the same company to have members on various job sites at the same time?

Mr. Dix: That's correct.

The Chair: Thank you for your presentation. We're right on time.

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JOHNSTONE BROTHERS EQUIPMENT CO.

The Chair: We'll move on to the next one, Johnstone Brothers Equipment, please.

Mr. Bill Johnstone: I've got Brent Peebles, a colleague of mine, along with me, if that's all right.

The Chair: Yes, it is.

Mr. Johnstone: Good day, Mr. Chairman, ladies and gentlemen, Mr. Kormos.

Thank you very much for the opportunity of speaking before the standing committee on the proposed reform of the Labour Relations Act today. In 1992, we were also afforded the time to speak to the standing committee on the proposed Bill 40. The only face I recognize in this current standing committee is Mrs. Witmer.

I'm a partner in a construction equipment business in Brampton. I've been involved in the construction industry for over 30 years and I have many, many good customers in this industry. At the present time, I'm hearing many concerns about the proposed Bill 144 amendments. That strictly relates to conscience.

I am also part of a universal Christian assembly known as Brethren. We are believers in the Lord Jesus Christ and pattern our lives strictly in accordance with the Holy Scripture, which we believe is the inspired word of God. With the help of the Holy Spirit of God, we maintain total separation from everything not in keeping with the Lord's Supper—that's Holy Communion—and not consistent with the "Holy Fellowship of God's Son." In short, we recognize God's supreme authority over us and we could never form or join or contribute to an association having any other basis.

This applies to every detail of our lives, including no membership in unions or any associations; no investment in mutual funds or shares in public companies; no group pensions, group insurance or group medical plans. In the same vein, we do not live in or operate our businesses from premises which involve a physical link, such as a shared wall or anything common. We don't have units—that kind of thing.

We assume no sectarian ground, believing that the gospel is preached to all men. We are here today to ensure that certain facts are presented to you as representatives of the government of Ontario. We pray for good government and support right government. We are concerned about Bill 144, because it appears as though authority will be given from the Ontario Labour Relations Board to the union, which is beyond what any unelected body should have. If I, as an employer, contravene the labour act, even unwittingly, the government may assign the union the right to certify my company. While you protect the conscience of employees in section 52 of the Ontario Labour Relations Act, there is no such protection for an employer. There is also no other arbiter of the alleged contravention.

The proposal is against my basic human rights that the Constitution of Canada and the Canadian Charter of Rights and Freedoms have as their basis: "Canada is founded upon principles that recognize the supremacy of God and the rule of law." Some of the fundamental freedoms in Canada are, as we probably all know: freedom of conscience and religion; freedom of thought, belief, opinion and expression; freedom of peaceful assembly and freedom of association, which would also include freedom of disassociation. As well, specifically set out is the right to pursue the gaining of a livelihood.

Because of my conscience before God, I could never have anything to do with trade unionism. Trade unions are an association with no scriptural basis, in complete disregard of God's principles regarding the workplace and, therefore, denying his rights over man, having as their reason for existence the legalization of collective power to act outside the law. Unionism has been strengthened by unsuspecting persons who have banded together and then been gripped by the insidious power that is the product of peer pressure.

Because we recognize the supremacy of God and own his rights over us, and because Canadian law has already enshrined in it this recognition, and because of my conscience, which has been enlightened by God's glad tidings concerning his son, Jesus Christ, our Lord, we appeal to you today to carefully consider your proposed reforms.

God has given all men the right—really, the requirement—to work so as to eat. “If any man does not like to work, neither let him eat.” That's the Holy Scripture. That's 2 Thessalonians 3, verse 10. That right cannot be taken away by mere men or prevalent social whim. It must be wrong to legislate the possibility of completely denying a person employment, thus letting him starve.

It is the duty of this government to exercise its God-given authority to protect the rights of both employer and employee, with no third-party involvement. We must state that any government alliance with trade unions, which are against God, condones violations of the divinely appointed master and servant relationship: Ephesians 6, verses 5 to 9. Introducing ungodly practices or ideas to administration of law will only compromise right judgment and open the door to further moral decline, not only here but across the country.

Has the government of Ontario considered the consequences of some of these proposed changes? To allow unions unhindered access to my business premises really vests in the union more authority than is wielded by police forces, which represent government.

Now, speaking on behalf of many persons of conscience in Ontario, I will state that if a union is imposed on any of our companies, we will close down our businesses and leave our employment, as dictated by our own conscience. Is this Ontario's vision for the future?

Thank you.

The Chair: We have three minutes; one minute each. Mr. Kormos, you're next.

Mr. Kormos: Mr. Johnstone, where you here when Mr. Baird was making his submission?

Mr. Johnstone: Yes, I heard that.

Mr. Kormos: I trust that you and he are coming from the same perspective.

Mr. Johnstone: Yes.

Mr. Kormos: I understand your position clearly. Thank you.

Ms. Wynne: I just need to clarify. You've said, and rightly, that employees are protected in section 52 of the

labour act, that they don't have to join for reasons of conscience.

Mr. Johnstone: Right.

Ms. Wynne: You, as an employer—I'm just not understanding exactly what protection you're looking for, because the employee, who would be the person who would join the union, is protected.

Mr. Johnstone: If I could give an example: If I contravened the Labour Relations Act, perhaps unwittingly, I believe, according to what I've read in the proposal, that you could say, “You must recognize a union in your business.” That's where I have a problem, because it's not that I want to be unfair to anyone. I want to pay my people equal to or better than what union employees get, but because of my conscience, I cannot have a union environment in my own shop.

Ms. Wynne: OK. I understood what you said, that your conscience wouldn't allow you to join a union. But you're saying that you couldn't, because of your conscience, live by the laws that govern unions?

Mr. Johnstone: That's right, because really, a collective agreement would have to be signed by both myself and the union, and I couldn't enter into that. That's really what I was trying to say. I'm sorry I put it so poorly.

Ms. Wynne: OK. Thank you.

Mrs. Witmer: What is it that you fear the most from this legislation? And thank you for your presentation.

Mr. Johnstone: You're very welcome, Mr. Witmer. It's been many years, hasn't it?

Mrs. Witmer: Yes, it has. We were both here in 1994.

Mr. Johnstone: We're trying to proceed simply in relation to our businesses. We don't want to take advantage of people. I mean, I understand; I read the papers; I listened today too, and I realize that there are big concerns about taking advantage of humanity.

We're not here to do that. We have a conscience before God. Really, what we'd like to do is have a conscience clause inserted that not only protects the employee but protects the employer, because we feel that's vital to the business continuation in Ontario. And we do contribute much in the way of generation of funds in our businesses to the province of Ontario.

The Chair: Thank you for coming.

SERVICE EMPLOYEES INTERNATIONAL UNION

The Chair: We'll most on to the last presentation, from the Service Employees International Union.

Mr. Van Beek, you may start any time you are ready, please.

Mr. John Van Beek: Thank you very much. I'm substituting for Linda MacKenzie-Nicholas, who was supposed to make the presentation, but she was called away this afternoon on an emergency medical situation in her family. So I'll be reading some of her remarks.

I just want to say that SEIU in the province of Ontario represents about 45,000 workers—women and immi-

grants, mainly—some of the lowest-paid workers in the province. Just two weeks ago, SEIU Local 1.0n had a vote at a nursing home in Toronto. Union representation guaranteed cards for over 60%, to 65% of the workforce. We lost it. We never lose nursing home representation votes, simply because of the kind of contracts that we have throughout the industry in about 120 nursing homes across the province.

What the hell happened between putting in the application for certification and the vote that day? I don't know. The only thing I can suggest is that our organizers tell us there's certainly a lot of intimidation on behalf of the employer. Mainly an immigrant workforce, women working at that location.

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The only way around this, I think, is a card-check certification process. Without a union card, workers in this province don't have any rights other than what employers will give them. In a previous life, I used to do health and safety, and I taught health and safety at George Brown College. I can tell you without a doubt that health and safety rights don't mean a damn thing unless there's a union present. Some of the worst conditions that poorly paid workers work in are unsafe conditions.

The question of mobility is also an issue. We represent the largest proportion of home care workers in the province. Contracts are flipped every three, four, five years, and workers lose their union simply because contracts are flipped for no other reason than that it's a managed competition model that the people who just left introduced back in 1999.

There's a situation in Hamilton in terms of the VHA, a non-profit organization that supplied home care services. They lost the contract. Why did they lose the contract? It certainly wasn't because the contracts were picked up by home care agencies that provided cheaper services—not at all. As a matter of fact, those services were more expensive. So what was it all about? It was all about union busting.

Home care workers don't have the same rights as any other workers because with elect-to-work they don't have successor rights. So we have to guarantee, once we have workers organized, that they remain organized and they have their rights in terms of trying to improve their work lives.

Linda MacKenzie-Nicholas has put together some comments in terms of the reasons why we believe card-check certification is important in Ontario. What is interesting is that in that brief she has also pointed out that there are hundreds of thousands of workers in Ontario who want to join a union but they won't join a union because they're afraid of intimidation. In her presentation, she has shown some statistics from StatsCan to make that point.

I can certainly say on behalf of the Service Employees International Union that any worker who signs a card does so knowingly, willingly and without intimidation, because once we sign a member, we want to make sure we keep that member. It's terribly important that we go

into a first contract situation with a very strong membership behind us, and the only way we can do that is to make sure that they believe in the union, that it will make things happen for them, in the first place. So a card check is honest, it's fair and it's important to move ahead the interests of the lowest-paid workers in this province, to give them some dignity, respect and at least something left over in their paycheques on a weekly basis so they can improve their economic lives. Thank you very much.

The Chair: Thank you. One minute each. My Flynn?

Mr. Flynn: No questions.

The Chair: Mr. Arnott?

Mr. Arnott: I don't think I have any questions either, but I appreciate your presentation. Thank you very much for coming.

The Chair: Mr. Kormos, one minute.

Mr. Kormos: I just want to understand SEIU's position perfectly clearly. You are advocating card-based certification for every working woman and man in this province?

Mr. Van Beek: Absolutely. It's the only fair way to go.

Mr. Kormos: Why would the government extend that only to a small group? I'm not begrudging the building trades the right to do card-based certification, by no stretch, but why would the government extend that to but a small group and ignore, quite frankly, some of the lowest-paid and most vulnerable workers?

Mr. Van Beek: I can only guess, and it would be sad for me, because I would have to become very cynical about the process. I don't think I want to do that today. I want to argue very strongly for the fact that each worker in this province should have equal rights. If there is a worker in the construction industry who has a well-paid job and someone who's cleaning the floors at the Royal Bank tower, and they don't get the same rights in terms of joining a union, that's wrong.

Mr. Kormos: My concern is about a workplace apartheid.

Mr. Van Beek: Sorry?

Mr. Kormos: I said, my concern is about a workplace apartheid.

Mr. Van Beek: Certainly it's a workplace apartheid; there's absolutely no question. There are different levels of workers, and it's simply wrong.

Mr. Kormos: Thank you, brother.

The Chair: There's a question from Ms. Wynne. We still have a couple more minutes.

Ms. Wynne: Thank you for your presentation. I'll take time to read the notes that you've left. I understand the card-based position that you're taking, but on some of the other initiatives in the bill—the remedial certification, the decertification posters, the interim reinstatement—can you comment on whether you think those are positive things and moving in the right direction?

Mr. Van Beek: We're tremendously happy that certainly the decertification posters have gone. Again, that was terribly unfair. You had a decertification poster, but you didn't have any posters that say, "Hey, you want to join a union?" Put that sucker up also.

Ms. Wynne: So you see this legislation as moving in a more balanced direction.

Mr. Van Beek: Certainly not balanced, because we're trying to re-establish some equilibrium that existed before. But you haven't gotten there yet. The water is still very high on the other side.

Mr. Kormos: You gave it your best effort, Ms. Wynne.

Ms. Wynne: I was looking for the movement. So you are happy with some of these pieces of the legislation, but you don't think we're there.

Mr. Van Beek: Not by a long shot.

The Chair: I thank you all. We did complete on time, and I thank all of you for respecting the time, starting from Mr. Craitor.

The committee adjourned at 1758.

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 26 April 2005

Mardi 26 avril 2005

*The committee met at 1530 in committee room 1.*LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Projet de loi 144, Loi modifiant des lois concernant les relations de travail.

SUBCOMMITTEE REPORT

The Chair (Mr. Mario G. Racco): Good afternoon, Ucal Powell and everybody else. Welcome to our second day in discussing Bill 144. If everybody will have a seat, we can start on time, please. The first item on the agenda today will be a motion to receive the report of the subcommittee that took place on Thursday, April 14. May I have a mover?

Ms. Kathleen O. Wynne (Don Valley West): I'd like to move the report of the subcommittee, and I believe I need to read it into the record.

Your subcommittee met on Thursday, April 14, 2005, to consider the method of proceeding on Bill 144, An Act to amend certain statutes relating to labour relations, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 144 on Monday, April 25, and Tuesday, April 26, 2005, in Toronto and that the committee travel to Kitchener, Ontario, for public hearings on Friday, April 29, 2005. Times and locations are subject to change based on witness response and travel logistics.

(2) That an advertisement be placed for one day in the Toronto Star, Globe and Mail, Toronto Sun, National Post, Kitchener Record and London Free Press and also be placed on the Ont.Parl channel, the Legislative Assembly Web site and in a press release.

(3) That the deadline for those who wish to make an oral presentation on Bill 144 be 5 p.m. on Wednesday, April 20, 2005.

(4) That the deadline for written submissions on Bill 144 be 5 p.m. on Friday, April 29, 2005.

(5) That the clerk be authorized to schedule groups and individuals in consultation with the Chair, and that if there are more witnesses wishing to appear than time

available, the clerk will provide the subcommittee members with the list of witnesses, and each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled.

(6) That the time to be allotted to organizations and individuals in which to make their presentations be determined by the Chair in consultation with the clerk depending on the number of requests received.

(7) That the research officer provide the committee with a summary of witness presentations, prior to clause-by-clause consideration of the bill, and that the research officer prepare a summary of provisions in Ontario and comparable jurisdictions on the issues.

(8) That amendments to Bill 144 should be received by the clerk of the committee by 5 p.m. on Tuesday, May 3, 2005.

(9) That the committee meet for the purpose of clause-by-clause consideration of Bill 144 on Monday, May 9, 2005, in Toronto.

(10) That the clerk of the committee, in consultation with the Chair, be authorized, prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the report, Mr. Chair.

The Chair: Are there any questions on the report? Is anyone in favour of the report? Anyone against? The report carries.

CARPENTERS' DISTRICT COUNCIL
OF ONTARIOUNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA

The Chair: The first presentation is from the Carpenters' District Council of Ontario. Mr. Ucal Powell and Charles Calligan are present. Please start your presentation. You've got 10 minutes total for your comments and, if there is any time left, we will allow some questions for you.

Mr. Ucal Powell: My name is Ucal Powell. I'm the president of the Carpenters' District Council of Ontario, and also secretary-treasurer of the Central Ontario Regional Council of Carpenters. With me is the secretary-treasurer of the Carpenters' District Council of Ontario. Brother Calligan will be reading our presentation. Obviously, we're here in support of Bill 144.

Mr. Charles Calligan: Part A, introduction: The Carpenters' District Council of Ontario and United Brotherhood of Carpenters and Joiners of America support Bill 144, An Act to amend certain statutes relating to labour relations, 2005.

The Carpenters' District Council of Ontario consists of 17 affiliated local unions across Ontario, representing almost 20,000 members. Our members consist of carpenters, drywallers, floor layers, caulkers and piledrivers who work in an industry that is unique, where work for an employer is normally of a short duration and, during any given year, a carpenter can work for any number of employers.

The construction industry consists of many different sectors, each of which presents its own unique dynamic. There are the industrial, commercial and institutional sector, the residential sector, the heavy engineering sector, the electrical systems power sector and others. Members of the carpenters' union can be found in each of these sectors. All of the members have a common goal; namely, to deliver a good quality finished product in a timely fashion.

An important part of the construction industry is apprentice training and the ongoing training of members of the carpenters' union. The construction industry needs to maintain the skilled carpenters currently working on projects and must also plan for replacing these skilled carpenters when they retire.

The carpenters' union, in conjunction with the unionized employers in the construction industry, has developed apprenticeship and training programs for carpenters throughout the province. These programs are sustained by the monetary contributions that are remitted to the apprenticeship and training trust funds when carpenters are employed on various projects in Ontario. Through collective agreements between the carpenters' union and unionized employers, for every hour worked by a member of the carpenters' union, a monetary sum is remitted to these apprenticeship and training trust funds.

The carpenters' union, again in conjunction with the unionized employers in the construction industry, has established training facilities at various locations in the province of Ontario. Admittedly, some grants have been received from various levels of government, but these grants by no means carry the financial load of the training facilities. It is the contributions paid through the collective agreements between the carpenters' union and the unionized employers that provide support for these training facilities. In other words, it is unionized employers, the employers who employ members of the carpenters' union in conjunction with the carpenters' union, who support and advance the training of new carpenters to the Ontario workforce and the ongoing training of current carpenters to upgrade their skills to meet changing technology.

Employers who have collective agreements with the carpenters' union also provide a fair standard of living to the employees of these employers. Not only is there a fair wage, but the collective agreements contain provisions

that provide health and welfare benefits and pension plans.

The carpenters' union and the employers of its members have established health and welfare plans that provide for the payment of prescription drugs, health care, life insurance, dental care etc. In order to support these plans, contributions are paid into a health and welfare fund on a monthly basis, again from the total wage package paid to members of the carpenters' union who work for these unionized employers.

The carpenters' union and the employers of its members have also established pension plans that will provide income to the members of the carpenters' union when they retire. In addition, the very existence of these pension plans serves to keep the skilled tradespersons—the carpenters and other trades—working in the construction industry during their working life. These pension plans are supported by the monthly contributions paid into pension trust funds from the total wage package paid to members of the carpenters' union who work for these unionized employers. These same unionized employers who, together with the carpenters' union provide apprenticeship opportunities, training, a fair wage, health and welfare benefits and pension plans, must then compete with employers who provide little or none of the foregoing.

Unionized employers in the construction industry often compete with employers who do not provide a fair wage, who do not provide health and welfare plans, who do not provide pension plans and who do not provide funds and facilities to introduce apprentices into the workforce and to retrain and upgrade current employees. In other words, non-union employers are often only concerned with obtaining work and completing the particular project. They have no interest in the long-term viability of the construction industry. Training and fair remuneration to the employees in the construction industry are key elements in ensuring that the construction industry in Ontario continues to thrive. These elements are only provided by unionized employers.

In a card-based certification system, employees can make a decision to join a trade union in the peace of their own home without interference or pressure from the employer. Where this decision is made in the workplace, whether or not by a secret ballot vote, the subtle and not-so-subtle pressures from employers improperly influence employee decision-making.

The construction industry can no longer support the employer who does not make a long-term investment in its employees, who does not make a long-term investment in training and who competes with unionized employers, not only to the detriment of the employees but to the detriment of the construction industry itself.

Part B, the Labour Relations Act: The duration of construction projects and the continual shifting of employees from one project to another makes certification in the construction industry difficult to obtain. The Goldenberg Royal Commission on Labour-Management Relations in the Construction Industry led to special

provisions in the Labour Relations Act dealing with employees and employers who worked in the construction industry. These provisions were initially enacted by the Legislature in 1961-62. In fact, in 1962, a special panel of the Ontario Labour Relations Board was established to deal with cases in the construction industry. Currently, the Labour Relations Act, 1995, has a distinct division of some 42 sections of the act that are specifically dedicated to employers and employees working in the construction industry.

Part C, The 1995 act: The 1995 act significantly altered the long-standing principle of card-based certification; that is, that a trade union in the construction industry could be certified without a vote where the trade union was able to establish the requisite membership support in the bargaining unit. The 1995 act changed this principle and required a representation vote in all applications for certification.

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For the period from 1961 to 1995, a trade union in the construction industry was able to obtain certification based on membership evidence that met the requirements of the Labour Relations Act. In 1995, the balance that had existed in the construction industry for over 30 years was upset by deleting the provisions relating to card-based certification.

Since 1961, the Labour Relations Act has contained many sections that only apply to employers and employees in the construction industry. Certain of these sections are seen to be providing a benefit to employees in the industry and certain other sections are seen as providing a benefit to the employers in this industry. In other words, there has usually been a balanced approach to legislation that is applicable to employers and employees in the construction industry.

Some of the unique provisions of the current act relating specifically to employers and employees in the construction industry can be found in sections dealing with single employer/sale of business declarations, termination of bargaining rights, referrals of grievances to arbitration, accreditation of employers' organizations, provincial bargaining, regulation of internal trade union affairs, common expiry dates of collective agreements in certain sectors of the construction industry, specific-term collective agreements, limits on the rights of strike lockouts and other provisions.

For over 30 years, the Legislature has acknowledged that, for the purpose of balanced approach to labour relations, the construction industry presents unique features that require a different approach to certification, collective bargaining and regulation of labour relations between employers and trade unions.

Part D, Bill 144, 2004: Under proposed Bill 144, if a trade union in the construction industry has more than 55% of the employees in the bargaining unit as members of the trade union, the board can either certify the trade union or direct a representation vote.

An obvious question is why card-based certification is to be made only to employees in the construction indus-

try. The answer to this question has been partially explained in the above parts of this paper, and is obvious.

In the construction industry, there are the following discrete characteristics: (a) employees often work for a particular employer for a short period of time; (b) the size of the workforce on a particular day varies constantly; (c) there is not one place of employment; each project is a place of employment; and (d) the collective agreements in the construction industry are markedly different from collective agreements in other industries; these collective agreements normally provide the flexibility to an employer to respond to the nature of the workplace, and the fact that work is provided on a project-by-project basis and that employees may be on the project for one day or more.

Given the nature of the construction industry, card-based certification provides the necessary balance that allows for employees to be represented by a trade union under a collective agreement, while at the same time providing a threshold of support that the trade union must have in order to obtain certification.

Card-based certification in the construction industry is but one piece of the special provisions of the act that are applicable to this industry. The absence of this piece during the past number of years has upset the balance and fairness that various Legislatures have strived to achieve since 1961-62. It can be further argued that card-based certification has existed in the province of Ontario since 1950 until 1995, some 45 years. However, even if one looks at the period since 1961-62 and considers the amendments to the Labour Relations Act that pertain specifically to the construction industry, a unique labour relations system has been built to accommodate the needs of employers and employees.

As stated earlier, and similar to the construction project in the province of Ontario, the labour relations system in the construction industry has been adapted and modified to meet the labour relations landscape that is unique to this industry. Again, like any construction project, it is necessary to revisit the site to ensure that the structure continues to meet the needs of the occupiers and is balanced and fair. Needless to say, other changes will no doubt be necessary in the future to ensure that the model remains relevant, balanced and fair to all participants.

The fact is that a card-based system of certification is not novel. It has existed for over 45 years in this province, and the time has come to restore this balance and fairness for employees in the construction industry. Thank you very much.

The Chair: Thank you very much to the Carpenters' District Council of Ontario for your presentation.

CANADIAN FEDERATION OF INDEPENDENT BUSINESS

The Chair: We'll move on to the next presentation, from the Canadian Federation of Independent Business. You can start any time. You have 10 minutes.

Ms. Judith Andrew: Good afternoon, Mr. Chairman. I'm Judith Andrew, vice-president, Ontario, of the Canadian Federation of Independent Business. Joining me is my colleague Satinder Chera, who is CFIB's Ontario director.

You have a kit before you. We're going to follow rather quickly through the main brief, but there are several other pieces of interest. In order to bring a couple of things to your attention, we've also put them up on easels.

CFIB is very proud to represent the interests of small- and medium-sized enterprises in the province. They employ half of working Ontarians, they create most of the net new jobs in the economy and they're a reliable barometer for what goes on in our economic prospects. On behalf of CFIB's 42,000 Ontario small- and medium-sized enterprise members, we appreciate the opportunity to appear here today.

Far from restoring the balance to labour relations, Bill 144 threatens democracy in the workplace and the economic prosperity of the province. Without major amendments, Bill 144 will threaten the fundamental principle of democracy by removing the democratic right of workers to vote on whether or not to join a union in all instances and the ability of the employer to communicate with his or her employees. Given the important role that our members and small businesses generally play in the economy, we hope that the committee will adopt our amendments to this undemocratic and anti-business piece of legislation.

I'd like to say a word about our latest quarterly business barometer. It shows that confidence in the economy in Ontario remains flat. More disheartening is that business confidence in this province actually fell further behind the national average as of our last quarter result. Compared to a year ago, only 35% of business owners say their firms are performing better, while 30% say they're doing worse.

Generally, though, small business people are optimistic—that optimism is hard-wired in them—and they anticipate to do better in the future. But political leaders should not take their future expectations for granted. The deteriorating conditions in a number of business factors, including insurance, electricity prices and other input costs, as well as negative policies such as Bill 144, are certainly confidence-eroding for even the most optimistic of entrepreneurs.

Because the committee was only able to allocate our group 10 minutes to present the views of so many small- and medium-sized businesses, we elicited comments from our members and we have a small sample here of over 9,000 responses we have had from our members, pretty much unanimously against the changes in Bill 144.

I'd like to also counter one thing that Mr. Kormos said earlier in the week, and that is the suggestion that small businesses somehow owe their livelihood to the big business sector and the large unionized companies that are in our economy. That is certainly incorrect. Small businesses are very much a driver of the economy and they

held the economy up post-9/11, in the face of lots of shocks, regardless of what big business and the stock market was doing.

Satinder will now talk about Bill 144's undemocratic provisions.

Mr. Satinder Chera: I thought I'd begin by talking about card-based certification, which is a direct threat to the fundamental principles of democracy by removing the democratic right of employees to vote in secret on whether or not they would wish to join a union. If it's good enough to elect politicians such as yourselves to office, then why isn't it good enough for the hard-working men and women of this province to decide through a secret ballot whether or not they wish to join a union?

In British Columbia they have a system called recall, where a constituent can sign up close to 40% of local constituents and have his or her member recalled. I wonder how many politicians around the table would entertain that possibility if it came to the province of Ontario. It's the same kind of concept. If it's good enough to vote you folks into office, it should be good enough for the employees of this province to be able to decide if they want to join a union.

In fact, with a card-based system, typically an employee will sign it as an expression of interest or a prelude to a potential vote. If you buy a vacuum from a door-to-door vacuum salesman, you still get a cooling-off period. Well, not in this case, if you sign up a card.

1550

Our members, in a recent national vote, overwhelmingly voted in favour of allowing employees a right to vote in secret on whether or not they wish to join a union. In the province of Ontario, 75% of our members voted in favour of maintaining the current system.

The second point that I wanted to raise is around remedial certification. The data from the Ontario Labour Relations Board show that the small business sector is the only remaining target for union certification. Small business people and their employees are generally completely unfamiliar with certification rules, and on the opposite side, they face experienced union organizers who thoroughly understand every nuance of the act and who, through their union affiliations, have vast resources at their disposal. Small firms, however, lack a legal department, an HR department, an accounting department. You folks know, on a day-to-day basis, the challenges small businesses go through. It's one of the reasons that the government, last week, announced the creation of the small business agency, recognizing the enormous workload that governments impose upon small firms.

So then it begs the question, why in fact are these changes being brought forward? The reality is, based on news reports last week, that unionization in this country is sharply declining, so one can hardly blame unions for wanting another kick at the can. Card-based certification allows that opportunity for them.

I want to quickly refer to the charts that we have presented for you folks today. Minister Bentley, when he

kicked off second reading of Bill 144, stated, "Over the previous 15 years, labour relations tended to be characterized by legislation that was polarized, and deliberately polarized; by legislation that actively promoted disharmony, directly or indirectly.... This bill [Bill 144] brings back the balance and stability that characterized the labour relations environment for the decades between 1950 and 1990." So we actually decided to go and do a bit of research. What we found from government statistics is that since 1990, the number of work stoppages in the province of Ontario has actually decreased overall. The notion that the former government's oversight led to a period of disharmony and instability is patently false.

Ms. Andrew: I'd like to say a few words about the construction sector chart that you'll find in your kits; it's also there. The minister has also said that construction is different. I think some of the construction representatives have said that as well: It's different, and in special circumstances, to ensure that workers have the right to properly decide, they need to include the option of card-based certification. Well, the reality here is that since 1999, the number of applications for certification in the construction sector have actually increased—that's the top line on your chart—but since the mid-1990s, more workers have actually said no to joining a construction union.

Far from respecting the rights of workers, Bill 144 serves the marketing interests of unions in helping them to obtain more favourable outcomes and gain more members, and the influence and money that goes with that.

Mr. Dhillon referred earlier in the week to there being some 400,000 construction workers in the province. Clearly, the unions, even the presenters just before us, are pining for a system that returns to the 1950s. But frankly instituting a vote in Ontario was progress; taking the vote away is not. There is already a situation in construction where a very small skeletal staff on a construction site—even if there is a vote, it can end up being a vote of a very few people who will be affected by that vote. This bill actually gives the unions the opportunity to do that kind of strategic vote, if there is a small, skeletal staff, or the card-base certification, if that serves them better. How does this serve the men and women who work for construction companies in terms of making their own decision?

The Chair: Thank you very much for your presentation. We just went over 10 minutes, so there is no time for questioning.

Mr. Peter Kormos (Niagara Centre): Chair, there can't be no time left.

The Chair: Yes, guaranteed.

ONTARIO RESTAURANT, HOTEL AND MOTEL ASSOCIATION

The Chair: The next presentation is the Ontario Restaurant, Hotel and Motel Association. You have 10 minutes in total. You can start any time you are ready.

Mr. Terry Mundell: Good afternoon, Mr Chair, and members of the committee. My name is Terry Mundell. I am the president and CEO of the Ontario Restaurant, Hotel and Motel Association. It's my pleasure to have the opportunity to speak with you this afternoon regarding Bill 144, the Labour Relations Statute Law Amendment Act.

The ORHMA is a non-profit industry association that represents the food service and accommodation industries in Ontario. With over 4,100 members province-wide, representing more than 11,000 establishments, the ORHMA is the largest provincial hospitality association in Canada. Our hospitality industry is comprised of more than 3,000 accommodation properties and 22,000 food service establishments.

The ORHMA has serious concerns with the potential ramifications of Bill 144, concerns so serious that we have worked collaboratively with 11 other industry associations to form the Coalition for Democratic Labour Relations. Together, we represent over 100,000 small, medium and large businesses. Our shared concerns regarding the very negative effects of this proposed legislation brought a very disparate, and often competing, group of companies together. We sincerely hope this brings home to the government the authenticity and depth of our concerns.

When Bill 144 was introduced, it was presented as the tool to achieve fairness and balance in the workplace. The ORHMA couldn't disagree more. This bill threatens the fundamental principles of democracy by removing the democratic right of employees to vote on whether or not they choose a union and by threatening an employer's right to free speech.

The coalition has worked collaboratively to develop proposed amendments to the legislation that will achieve the fairness and balance that the government has said this bill is intended to bring about. A copy of these proposed amendments has been shared with the Minister of Labour and with all members of the Legislature. We have also provided a copy for members of the committee today.

The ORHMA urges the committee to support the principles of democracy and to support our proposed amendments. The ORHMA has concerns with the sections of Bill 144 specifically addressing remedial certification, decertification posters, interim remedies and card-based certification. Due to time constraints, I will only address three of these.

Remedial certification: As currently drafted, Bill 144 gives the Ontario Labour Relations Board the power to impose union certification if it judges that the employer has violated the Labour Relations Act. While public messaging by the government has stated that this power would only be used as a last resort, the legislation does not explicitly state this, nor does it explain what this means. Instead, smaller employers who may lack resources, legal background and experience may find themselves unwittingly committing acts that result in the labour relations board certifying their employees, without employees having had any chance to express how they feel about being unionized.

If the government is determined to allow the Ontario Labour Relations Board to make the decision on certification on behalf of employees, the circumstances in which this power will be used must be clearly set out in law. The ORHMA recommends that this section of the bill be amended to:

- Set out the types of conduct that can trigger remedial certification, specifically: repetitive acts or threats of physical violence against employees, termination of two or more employees known by the employer to be authorized and acting as inside organizers on behalf of the trade union, where the terminations are determined by the board to be contrary to the act, and repeated breaches of an order of the board;

- place the onus of proof on the applicant to prove that no other remedy exists;

- provide that a full, three-person panel of the board must agree to remedial certification before it can be ordered; and

- ensure in every case that employees are given at least one opportunity to cast a ballot and exercise the democratic right to express their views.

Interim reinstatement: Bill 144 gives the labour board the power to reinstate terminated workers while the issue of whether or not there was just cause for their dismissal is being litigated and before their employer is ever found to have done anything wrong. There is absolutely no recourse for the employer if the board ultimately finds the employer did nothing wrong in the first place. If this section is not amended, there is nothing to stop unions from filing unsubstantiated claims of dismissal, regardless of the merits of the case. This will create a climate where employers are hesitant to effectively run their own businesses for fear of having to deal with costly litigation arising from legitimate business decisions. The ORHMA recommends that this section be withdrawn.

Card-based certification: We believe that all Ontarians should be treated equally and that all Ontarians, in all sectors, should have the right to a secret ballot vote. The ORHMA opposes card-based certification in any sector and, as such, calls upon the government to remove this provision from the legislation.

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The ORHMA urges you to support the adoption of the coalition's amendments in order to protect the democratic rights of employees and employers. In the past year and a half, this government has openly discussed a democratic deficit. The ORHMA respectfully submits to this committee that any denial of a vote, that is, a vote by secret ballot, is the worst offence in fostering that democratic deficit. The ORHMA urges the adoption of the recommendations put forward by the Coalition for Democratic Labour Relations. Thank you very much.

The Chair: There are about three minutes left. I'll start with you, Mr. Kormos, please.

Mr. Kormos: I understand your position. You're not the only person who has articulated it. But you've caused me to reflect, and this is more an observation than a question. The Plentai family ran the Blue Star Restaurant

in Welland—they still run it; third generation—and every time there was a picket line on a lockout or a strike across the road at Page Hersey Stelco, the meals were free, because they understood that if you don't have good union jobs in a community like the one I live in, people don't have money to spend in restaurants, to spend on recreational things. They don't have money to buy furniture, cars.

I appreciate what you're saying, but thank God for the union, because it has created this high-wage economy, which allows us all to prosper. But I appreciate what you're saying, because you're not anti-union. You believe in unions; you're just saying you don't agree with the formula set out in the bill. I'm sure you're not anti-union.

Mr. Mundell: I think it's very important to recognize the democratic rights of both employees and employers to exercise their franchise. That's what this country was based on and built on.

Mr. Kevin Daniel Flynn (Oakville): On page 2 of your presentation, you talk about "smaller employers who may lack resources, legal background and experience." I've got some sympathy for that, because we don't want anyone to be organized who doesn't want to be organized, and we don't want anyone who wants to be organized to not have that right to be organized. How would you suggest we do a better job of getting that information out to the employers, what is right and acceptable behaviour and what is not acceptable behaviour?

Mr. Mundell: You probably need to be better organized.

Mr. Flynn: In what way?

Mr. Mundell: I think the bottom line with any of these types of things—small business right now is feeling an incredible burden. There is so much legislation, so many rules and requirements that you have to follow every day, it's extremely difficult to stay up with it. I think it's very important on the government's behalf to ensure that all businesses, that all employees and employers understand their rights and obligations and, last but not least, have the ability to exercise that franchise, to make that vote, to make your position known whether or not you want to be unionized. It is extremely important.

Mr. Ted Arnott (Waterloo-Wellington): Your industry is under stress on a number of different fronts at the present time, and I know you've responded to those challenges, one at a time. I think your presentation today is very helpful, hopefully, to getting the government members to understand how important this legislation is to your members.

I'm glad you highlighted the issue of some of your members perhaps not knowing what the labour law would be and inadvertently being in a situation where remedial certification might kick in, because that's an important point that I think the government has to consider.

Also, the emphasis on the secret ballot: You as a former municipal politician understand very well that the secret ballot is the surest form of democracy we have in

this province. We repeatedly asked the question yesterday to many of the union representatives, what is wrong with a secret ballot? We still haven't had an answer.

The Chair: Thanks very much for your comments. There is no more time.

LABORERS' INTERNATIONAL UNION
OF NORTH AMERICA,
ONTARIO PROVINCIAL DISTRICT
COUNCIL

The Chair: We'll move on to the next presentation. Patrick Little is the next presentation. Mr. Little, you have 10 minutes. Please start any time you are ready. We will all be listening to your presentation right now.

Mr. Patrick Little: My name is Patrick Little. On your agenda it does not indicate that I am the business manager of the Ontario Provincial District Council of the Laborers' International Union of North America, or LIUNA. With me is a member of our Local 837, Hamilton, Brother Jim Evans.

I represent the council of the laborers' union, which represents 12 local unions across the province. These local unions represent approximately 35,000 construction workers. Our union wholeheartedly supports Bill 144 as a return to fairness and balance in labour relations in Ontario and commends the government for making good its election promises to the workers of the province.

Remedial certification is crucial to ensuring meaningful access to workers' rights to organize. It has long been recognized as the only effective remedy to counteract the chilling effect of unfair labour practices during an organizing drive. The Ontario Labour Relations Board has seen many examples of intimidation and coercion in the cases before it, and its jurisprudence in this area reflects this.

In *Winsome Construction*, a 1976 decision of the Ontario Labour Relations Board, the board made the following comment about the impact of threats by an employer: "A warning to employees that the certification of a trade union would result in layoffs and shorter working hours would, lacking any other considerations, tend to have such an intimidating effect that employees might reasonably be expected to refrain from voting for the union no matter what their true feeling about being represented. In such a situation, to vote in favour of being represented by the trade union might well appear to employees to be tantamount to voting themselves out of a job, or at best, a drop in pay."

Since the attacks on the rights of workers by the Harris government, the only remedy available for cases involving unfair labour practices corrupting a vote has been a second representation vote. If this were an effective remedy, you would expect that the success rate of second votes would reasonably mirror that of votes without employer interference. They do not. In fact, only a handful of unions has been able to win a second vote. That's because, as the board has been saying for years and years, there is no way to undo the intimidating effects of

threats and discharges short of imposing certification on the offending employer.

Under the current system, employers have an incentive to threaten and intimidate employees at an early stage of an organizing drive because they can thereby drastically affect the number of cards the union can obtain, and even though the board might chastise the employer and order it to cease and desist, the climate of fear already created cannot be effectively dispelled. The free choice of the worker to union representation is irreparably damaged.

Restoring remedial certification to the Labour Relations Act will level the playing field for all unions—construction and industrial—and for all employees who want access to union representation.

Restoring the board's power to grant interim reinstatement is another very important aspect of Bill 144. In this province, it is not uncommon for employees to be discharged once the employer learns that they are attempting to organize. It is not uncommon, because there is no more effective way to intimidate employees and stop an organizing campaign dead in its tracks. The discharge of a lead supporter sends a clear and convincing warning to others that support for the union will cost them their jobs.

In *Loeb Highland*, a 1993 decision of the Ontario Labour Relations Board, the board made these comments about the effect of a discharge during an organizing drive: "The combination of economic vulnerability of employees and their assumption that an employer does not welcome a union means that a union organizing drive is a relatively fragile enterprise in which momentum is often crucial. Where a campaign is disrupted by an unlawful discharge, the board's jurisprudence under section 9.2 of the act reflects the fact that such momentum cannot easily be restored by the reinstatement of an employee at some point further down the road."

Under the current act, when the board finds that an employee was discharged because of his or her support for a union, the board can order the employee reinstated with back pay. However, it is important to note that these cases typically take months to litigate, and that delay is deadly for organizing campaigns. Workers and their families often cannot pay such a high price for their desire for union representation, nor should they be required to do so.

By bringing back interim reinstatement, the Legislature will provide employees in all industries effective protection from unfair reprisal.

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Card-based certification is not a new concept, as was mentioned in an earlier presentation. It was in effect for almost 50 years, from 1948 to 1995, under Conservative, NDP and Liberal governments. It is a tried, tested and true method for determining employee wishes with regard to representation. In fact, the Ontario Labour Relations Board has an extensive body of case law aimed at ensuring that membership cards used in certification applications constitute a fair and accurate representation of employee wishes.

Under the card-based system, an organizing drive can be completed before the employer knows it is happening and thereby reflects the actual choice of the employees regarding representation. Under the current vote system, the employer is notified of an application as soon as it is filed and has the opportunity to intimidate the employees prior to the vote being held. As well, the vote is often held at the employer's place of business or on construction sites, under less than ideal conditions and under the watchful eyes of the employer.

All of these conditions often combine to create an atmosphere of intimidation and result in the employees not daring to express their desire to be organized, secret ballot notwithstanding. As well, the vote system requires already strained board resources to be further expended by dispatching officers to job sites all over the province to conduct these votes.

Card-based certification is particularly appropriate to the construction industry because of the mobile and transitory nature of construction work. The short-term nature of the construction worker's employment makes it much easier for an unscrupulous employer to apply pressure through threats of layoff via crew reductions, reassignments etc., as these activities are not unusual in the normal course of the job and are hard to prove as an unfair labour practice. The Ontario Labour Relations Act has long recognized the unique nature of the construction sector as requiring special legislative treatment, and this provision simply continues that recognition.

These important amendments to the act, as well as the changes in the proposed legislation which remove remnants of the Harris government's anti-union bias such as decertification posting and union salary disclosures, which were so blatantly one-sided and anti-union, are also addressed and make it clear to all that this Liberal government has moved, as promised, to restore fairness and balance to labour relations in Ontario.

In conclusion, our union believes that Bill 144 reflects a balanced and fair approach to amending the act, and we strongly urge that it be given passage through the Legislature as soon as possible.

The Chair: There's about a minute to go. We'll take it to one and a half minutes, so 30 seconds each, please.

Mr. Flynn: On page 2 of your presentation, you talk about the remedial certification. Many presenters to date have talked about that and its impact on employers. Do you understand and accept the responsibility that comes along with that as well, as it applies to trade unions and unions?

Mr. Little: Absolutely.

Mr. Flynn: And you agree with that?

Mr. Little: I sure do.

The Chair: Mr. Arnott?

Mr. Arnott: I don't have any questions, but thank you very much for your presentation.

The Chair: Mr. Kormos?

Mr. Kormos: You'd be good folks to ask about the disparity between union wages and non-union wages, these folks more so than me. Give me a general im-

pression of what the difference is between a union job in your sector and a non-union job, first with wages, and then we'll talk about benefits.

Mr. Little: Wages can run from minimum wage to whatever the market bears, and in that case it usually heads downward to minimum wage. But in non-union construction, for a labourer you could be talking maybe \$10 or \$11 an hour. The existing rate in the ICI sector, the rough average, for labourers is around \$28 an hour.

Mr. Kormos: That worker is paying a lot more taxes than one making \$10 an hour.

Mr. Little: They do. There's one other thing I'd like to say about that. What's probably more important is the benefit package. We have a substantial pension program, and we have a very good health and welfare program. We're very proud of that.

The Chair: Thank you for your presentation.

CANADIAN RESTAURANT AND FOODSERVICES ASSOCIATION

The Chair: The next presentation will be the Canadian Restaurant and Foodservices Association, Joyce Reynolds. Please have a seat. You have 10 minutes in total, if possible. You can speak for 10 minutes or leave some time for questioning.

Ms. Joyce Reynolds: I'll read fast.

Good afternoon. My name is Joyce Reynolds. I'm senior VP of government affairs for the Canadian Restaurant and Foodservices Association. I'm here because I am concerned about the impact of Bill 144 on the 8,300 food service businesses the Canadian Restaurant and Foodservices Association represents in Ontario.

Ontario's \$19.5-billion food service industry is one of the province's largest employers. A stable labour environment is vital to the 22,300 restaurant and food service establishments in Ontario and their 381,000 employees. Attracting new investment is necessary to increase disposable income, on which our sector is dependent. We are concerned that this legislation will discourage economic activity, reduce business investment and lower employment growth in this province.

The food service industry operates on razor-thin margins, with the average food service operator in Ontario realizing a return, before income tax, of 2.2 cents on the dollar in 2003, according to Statistics Canada. Small independent Canadian-owned companies dominate the industry, with a high proportion operated by families. These small independent operators have limited or no experience dealing with the labour relations system. This creates a significant disadvantage and imbalance for employers in the food service industry, who must deal with a Labour Relations Act designed for a larger, more organized workforce.

The minister has emphasized in his remarks that Bill 144 will restore fairness and balance to labour relations in the province of Ontario. We believe it will do the opposite. The legislation removes the cornerstone of democracy and fairness, the secret ballot vote, and

unfairly tips the balance of power in labour relations in favour of unions, which are focusing on the service sector for new sources of revenue and membership.

Changes to the Labour Relations Act should be focused on what is good for employees and the economy of Ontario, rather than what is good for unions. I understand and appreciate the role of unions, and I support the right of employees to choose whether or not they want a third party to negotiate their working conditions. However, I think the laws governing the collective bargaining process must be fair, balanced, and realistic. This means they must give employees a fair say in whether or not they want to join a union. The proposed amendments do not.

CRFA is particularly concerned with the proposed remedial certification provisions, which give the Ontario Labour Relations Board the power to impose certification if it believes the employer has violated the Labour Relations Act. Specifically, we object to the removal of a fair, democratic process to determine if employees want to be part of a union or not.

A union organizer's goal is to sign up as many members as possible. There is no assurance that the organizer will voluntarily provide a full and balanced perspective on the responsibilities that go along with joining a union when signing up a member. They aren't obligated to inform an employee before he or she signs the card of the significance of their signature: the obligations that come with joining such as weekly dues, the new rules that will be imposed in the workplace or the possibility of a work stoppage.

Because a union organizer's goal is to obtain as many cards as possible, it is unrealistic to expect the organizer will voluntarily provide a full and balanced account of the individual's right to accept or reject the union's campaign. Efforts by employers to advise employees of their rights are viewed with suspicion and if an employer provides objective information about the negative impact of unions on their business, including the possibility of employees losing their jobs, that employer could be accused of an unfair labour practice and certified without recourse, regardless of the wishes of employees.

The nature of the food service business requires a great deal of informal interaction between supervisors, managers and employees. Employees often want input from their employer before they make a decision. However, most employers are afraid to communicate with their employees about unions, let alone influence their employees in any way, for fear of an unfair labour practice ruling.

Instead of the traditional concern that one employee could be at a disadvantage when negotiating with a large corporation, the concern in our industry is that the small, independent and inexperienced employer is disadvantaged when facing a huge, well-financed and well-resourced union.

The fact that remedial certification has existed previously in Ontario legislation is not an effective argument for bringing it back. Let's look at what happened in Ontario under Bill 40, when an unfair labour practice

resulted in automatic certification. I will highlight one example of how remedial certification reduced the rights and privileges of employees. In the Royal Shirt case in Ontario, the union began an organizing effort without being invited to do so by the employees and without an inside organizer. The union put leaflets on car windshields in the company parking lot, then parked and observed as a neighbouring employer took a copy of the leaflet into the plant. The union thus established the company's awareness of its organizing attempt.

Two weeks later, the union representatives handed out leaflets and membership cards as employees left work. The next day, three employees were terminated, allegedly for poor performance. The board found that although these three employees were not union organizers, the employer selected them for discharge because it suspected they were union organizers. This was sufficient to cause an unfair labour practice finding.

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The discharges for suspected union activity, in turn, were sufficient in the board's view to make it unlikely that the true wishes of employees could be ascertained by a representative vote. Even though only one employee had signed a union membership card, the union was certified, because, under Bill 40, as in the case of the proposed legislation, the union's membership support was irrelevant.

Despite a request for consideration of the certification decision and evidence in the form of petitions signed by over 100 employees rejecting the union, the board ruled as follows: "The employer is the author of these events and ... that conduct may prove costly to all parties involved, including and particularly the employees. Having engaged in that illegal conduct, the employer and the employees are required to now provide the trade union with an opportunity to engage in collective bargaining on behalf of the employees."

In other words, the board was willing to make the employees pay for the employer's unlawful conduct. This case illustrates how remedial certification serves to punish employees and not protect them.

In the third Royal Shirt decision, a group of Royal Shirt employees retained counsel and applied for decertification of the trade union on the grounds that the union had failed to deliver notice to bargain within the 60-day time period required under the act.

The union's failure to bargain with the employer resulted from its inability to obtain bargaining instructions or appoint a bargaining committee because of lack of employee support for the union, but again the employees were denied a secret ballot vote. According to one board member, and again I quote: "We were asked to take into account the wishes of the employees while exercising our discretion as to whether a termination vote should be ordered. Now, amendments in 1993 to the act make it clear that employee wishes were not a factor to be considered. If that was the wish of the Legislature in November 1993, then it is difficult to conceive that the Legislature wanted us to listen to the employees in June 1994."

Today, the board has the power to order another certification vote in circumstances where the act has been contravened or where a union can demonstrate that it has membership support adequate for the purpose of collective bargaining. Our message is to not repeat the mistakes made by previous legislators in this province. As the Royal Shirt case illustrates, enhancing the rights of unions often results in a downgrading of employee rights.

For the reasons I've just stated, it is CRFA's recommendation that the remedial certification proposal be removed from the bill entirely. If it is retained, we urge you, at the very least, to amend it to avoid an onslaught of frivolous claims of unfair labour practice.

The minister has indicated that remedial certification is designed to address "the worst labour relations behaviour" and "serious" breaches of the law only and is to be used as a last resort, but this intent is not reflected in the legislation. The legislation should explicitly state what types of conduct can trigger remedial certification and how it will be applied. As recommended by the Coalition for Democratic Labour Relations, serious—I'm not going to go through what the serious breaches of the act would include. The coalition has already reviewed those for you, and Terry did so a few minutes ago, and they're in my presentation. I think you're familiar with them now.

I also need to point out that the remedial certification provisions are out of sync with the views of Ontarians. A poll of Canadians, representative of the Canadian working population, undertaken by Leger Marketing in the summer of 2003 assessed attitudes of Canadians about union certification as follows:

—85% of Ontarians believe that a secret ballot vote should be required when forming or removing a union;

—92% of Ontarians agree that employers should be able to communicate the potential impact of a union on their employer to their employees;

—79% of Ontarians disagree with the statement that government should be able to impose a union in the workplace without an employee secret ballot vote.

CRFA believes that the interim reinstatement provision is redundant since the labour relations board has always had the power to reinstate employees. The difference with this provision is that the reinstatement will take place without an official finding that an employer has breached the law. This raises concerns that unions may file unsubstantiated claims of dismissal without recourse or remedy if the employer is found to have done no wrong. As a result, we believe this section should be withdrawn.

The Chair: Thank you for your presentation. I think we have your written material, so we thank you. There's no time for questioning.

UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Chair: We will move on to the next presentation, the United Steelworkers of America, district 6. Would you please have a seat, and start your presentation when

you're ready. There is a total of 10 minutes for your presentation.

Ms. Marie Kelly: I want to start by thanking the standing committee for the opportunity to speak today. My name is Marie Kelly. I'm the assistant director for the Steelworkers for Ontario and the Atlantic provinces. I have a few written notes I want to read, and after that, I'll open it up to questions.

I'm here today in my role as an advocate for working people, I'm here as a woman, I'm here as a voter in this province and I'm here on behalf of 90,000 Steelworkers in Ontario. I'm here to talk about the deplorable state of the labour laws and the discriminatory way in which the Liberals are seeking to bring back fairness to workers in Ontario.

The Liberal government announced amendments to the Ontario Labour Relations Act in November last year. Their amendments only extended card certification to the predominantly white male construction sector. I'm sure you've heard a lot in the last couple of days about the history of card-based certification. It was first introduced in Ontario in the 1950s. Through successive governments, whether they be Liberal, NDP or Progressive Conservative, card-based certification for obtaining union representation lasted decades in Ontario. It still exists federally and in other provinces in Canada. It lasted that long because it was recognized as the best method to allow employees to freely exercise the choice of whether to belong to a union.

In 1995, then-Premier Mike Harris gutted the Labour Relations Act and, for the first time ever in Ontario, instituted a mandatory vote for the certification system, abolishing the card certification system as we knew it. This has led to a decline in union certifications in this province. The decline clearly demonstrates that employees in Ontario today are being denied the same right to join a union that was present in 1994 or even in the 1950s.

The Liberals campaigned on bringing back fairness into the labour laws. We're here today to let you know that the voters in this province will hold you accountable to that promise. The need for the Liberal government to restore card-based certification for all workers in Ontario and not just for the construction trades is an issue of fairness and respect for all members of our society. The vote-based system effectively increases the ability of employers to intimidate and coerce employees. To impose a vote after the signing of a union card leaves workers open and vulnerable to employer intimidation and coercion.

The Liberal-proposed changes make it easier for the male-dominated construction sector unions to have access to workers and for workers to have access to the unions and the increased benefits we as trade unions provide, but they discriminate against women and visible minority members of our province, who will have an additional hurdle to get over in obtaining trade union rights.

It's unfathomable to me that in 2005, we would have a government representing workers in this province that

would bring in legislation that is sexist and discriminatory. It's unfathomable to me that in 2005, we would have a government that thinks it's OK to say to the workers in this province, "If you're a white male in the construction sector, your signature is good enough," but to women, "We don't trust your signature. We want to look behind it and test whether or not your signature is valid. We're going to have a vote."

We know you've given back card-based certification to the construction sector because you know it's the right thing to do. It's the only true way to allow employees to assert rights that the labour relations legislation provides to them. We also know you didn't bring it back for all workers because it's the construction unions who have held fundraiser after fundraiser for the Liberal Party.

The Gomery commission has recently shed light on the corruption of the federal Liberal Party, and it uncovers an inexcusable misuse of governmental power and the shady Liberal campaign contributions that went with it. Now we learn that the provincial Liberals are afflicted with a similar disease to that of your federal counterparts: doling out protections to the construction sector in return for sizable Liberal Party contributions.

Access to basic labour rights should not and cannot be doled out to your friends in return for thousands and thousands in Liberal Party contributions. If card-based certification is the only way to protect your friends and supporters of the Liberal Party, then it's the only way to protect all working people in this province. Just as the federal Liberals will soon be held accountable for their corruption, so too will the provincial Liberals be held accountable for this scandal and for the sexist and racist legislation attached to it.

The proposed sexist changes display the bold, irresponsible discrimination that the provincial Liberals have toward the working people of this province. To bring in a law that provides less protection and opportunity for women is discrimination at its worst, and it's just plain wrong.

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Statistics show that women employed full-time or part-time in unionized jobs earn more than their non-union counterparts. Statistics also show that women in unionized jobs have significantly begun to close the gender gap to their male counterparts. The Liberals must know that bringing in a law that provides less opportunity for women to join a union forces and confines them into lower-wage jobs with fewer protections and fewer rights.

I remind this government that women make up a large segment of the workforce in Ontario. If you are counting on the women's vote to re-elect this government, then you'd better think again. If you are, then this Liberal government had better rethink its sexist legislation, because women of this province will hold you accountable.

The Steelworkers and our social partners in the communities will do everything to keep this issue alive and on the spectrum. So long as it stands on the books, we won't let you fly under the radar screen. We won't let

you hide from your sexism. Workers in this province expect to be treated fairly. Women in this province demand to be treated equally, including equal access to trade unions and the good-paying jobs they provide.

I have today with me a couple of people. One of them is Shane Martinez from the Ontario Health Coalition. I have a letter here from the Ontario Health Coalition; I'll provide a copy to you. They too are in support of amending Bill 144 so that you provide the same rights and protections to all workers.

Also with me here today I have Kelly Wynn. I'm going to tell you a little story about Kelly. She used to be an employee of DSC until she got involved in an organizing campaign. In that organizing campaign, she was a union supporter, and the employer began intimidation tactics at that workplace. It actually, in a novel situation to me as a Steelworker, threatened its supervisors that they would lose their jobs if the union got in. In turn, the supervisors then turned on the employees and began intimidation of the employees. As a result, we had over 55% of the cards, which we supplied to the board. By the time the vote came around seven days later, after the intimidation and coercion, we lost the vote. Not surprisingly, shortly thereafter when the vote was lost, the union supporters were let go—terminated. Kelly now has employment at another workplace.

The changes and the protections we're talking about affect real, live people. They affect real, live workers. They affect the women in this province, and we expect this government to revisit its legislation and provide the same protections for all workers.

The Chair: There are only 30 seconds. The opposition—just one question, please.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): I want to thank you for your presentation. I think you and I would agree this is certainly discriminatory legislation in that only a few of the workers are given certain rights. On other points, obviously, we would disagree, but I appreciate your very passionate presentation.

The Chair: Thanks very much for your presentation.

CANADIAN AUTO WORKERS

The Chair: We'll move on to the next presentation, which is from the Canadian Auto Workers. Go ahead, Madam. You have 10 minutes.

Ms. Peggy Nash: Good afternoon, everyone. My name is Peggy Nash. I'm assistant to the national president of the Canadian Auto Workers. I'm here on behalf of our president, Buzz Hargrove. To my left is Jenny Ahn, president of Local 40 and a member of our national executive board. To my right is Paul Forder, our director of government relations.

The Canadian Auto Workers represents 265,000 members across Canada, more than 170,000 members in Ontario. More than 35% of our members are women, and our members work in 16 different sectors of the economy. We are here today to call on the committee to make only one change to the legislation that they are putting

forward. That one change is to extend card-check certification to all workers in Ontario.

As others have said, card-check certification was the law for decades in Ontario. Under governments of all stripes, it worked very well and endorsed the facilitation of union organization and collective bargaining as a critical public policy instrument in our province.

Previous administrations encouraged collective bargaining through union certification, negotiation and administration of collective agreements that promoted economic fairness in the workplace and, in turn, supported broad public demand for goods and services in our economy, as well as helping to enforce health and safety rules, create safer workplaces in Ontario, advance human and equality rights, and create better workplaces.

There should be no hurdles placed in the way of a secret, fair, confidential decision-making process for workers to determine if they want to engage in collective bargaining. A card-check system does allow that for workers. The current system, as you know, provides for a very one-sided, undemocratic process. It provides a two-step hurdle that no one else has to achieve in society today. I suggest that those elected around this room do not have to meet the test of a two-step system, achieving more than 50% of the popular vote. We know that once a vote is called—under the current system, within five to seven days—employers have held captive meetings and implied that workers would be laid off on the pretext of an economic downturn, and people's job security has been called into question.

Where else would you find a system where theoretically there are two parties to the vote—that is, those who support the union and the employer, who encourages no support for the union—and yet one party to the vote supervises and pays those who are voting and has votes cast on their premises and their people are scrutineering as the vote takes place? It's not a democratic process as it stands today—we know time after time—and we have examples of workers becoming intimidated through this process. I suggest that no election for a seat in a democratic Legislative Assembly would be seen as fair if it were held under these conditions.

Finally, there is something unsettling about your government's extending card-check certification to one group of employees and not to others. We support the advancement of card-check certification for those in the building trades, but why this arbitrary decision by this government? Surely, if you believe in this important principle, you understand the impact on freedom of association of only extending this to one group of workers and not to others.

I want to call on my two colleagues now to make a few remarks, and hopefully we'll have time for questions.

Ms. Jenny Ahn: I too would like to thank everyone here for the opportunity to spend a few minutes to share with you what it's like as a local president representing workers who look a lot like myself. I have 17 different workplaces across the GTA, and the vast majority of those workers look like me. They are women, they are

immigrants and they are people of colour. They come from traditionally very low-paid workplaces, but because they have a union in the workplace, they have been able to make achievements, make better wages and have better benefits. I think it's important in this province to ensure that we have card-check certification.

As we know, not only this province but this country is made up of immigrants, and we do have a lot of lower-paying jobs like my local, which can make a big difference in terms of changing the economy. When people have money to spend and have a stable job, it definitely makes a difference. I believe that all workers need to have the same rights afforded to the construction sector, as I've seen the difference it makes in people's lives—I think I'm a good example. I've lived in this province since I came to Canada. Belonging to a union has made a tremendous difference for myself and the work I've done, and I'd like to see the government provide this for all workers in this province. It has worked for 45 years, it's not revolutionary and I think it can be done if the will is there.

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Mr. Paul Forder: There's something fundamental about you, about us. You are legislators. You have the obligation to make a right law, a better law, a good law that's fair and non-discriminatory. I'm going to suggest strongly to the committee members here that many of you want to do that, except maybe some of the Conservative members who aren't convinced that there are some valid arguments to making things fairer.

I've got this attached to the back of our submission. I want to assume for a minute that every one of you has signed this card—you're intelligent people; you've read it. There are three big Xs that clearly say you want to do this. All of a sudden, somebody says, "Stop. In seven days, what you've just decided to do in joining a trade union—we don't accept that, because you see, you are somehow an imbecile. You don't know what you signed. You've been lied to. You've been deceived." Absolute nonsense. Just the opposite.

I liked Mr. Arnott's comment. He asked why people couldn't answer the question about why they didn't like a democratic vote. There is absolutely nothing fair or democratic or right about a vote that takes place on the employer's premises with the employer controlling the agenda.

I want you to look at page 3 of our submission. You're all politicians. I want you to assume you're going to get re-elected. These are the conditions under which you have to get re-elected—every one of you. You don't have a voters' list, but your opponent does. Your opponent's election workers have unlimited access to the voters for eight and a half hours a day for five working days while they're in the workplace. Your opponent can post as many election signs and distribute as much literature on the premises as they would like, but you cannot. Your opponent also happens to be the voters' employer. You are not allowed to enter the voters' workplace. Your opponent tells voters that if they vote for you and you get re-elected, they may not have a job. You're free to talk to

the voters when they leave the workplace, but of course they're watched by guards and by your opponent. They don't feel comfortable. They don't talk to you too easily. On voting day, you're entitled to go there and sit with the voting officer and your opponent. Your opponent's managers go and bring the workers to and from the voting station and talk to them all the while, and then your opponent and their campaign workers have a celebration after and say, "This is such a wonderful, democratic process under which we've just been re-elected." It's absolutely nonsense.

You wouldn't say that elections in the world—we know where some elections are stolen; we know where some elections are wrong-headed, where people are intimidated. The only way you can stop the intimidation is to take a look at the appendix we have here. Take a look at Ontario Chrysler. We signed 28 cards. They took the workers into one-on-one meetings. Workers were crying. They were told they wouldn't have a job. They fired our organizer and we got four votes. Imagine: All of you have just signed, and six days later we come back and we get one of you to say, "Yeah, we still want to stay with you."

Come on. You're legislators. You know the process. You understand the intimidation. I've got to tell you one thing: Employers can never speak for workers, although they would like to. Workers can speak for workers. Union representatives, bargaining agents can speak for the workers they represent. By the way—and I close with this—once they're in unions, why is it that they don't leave? Because the union negotiates economics for them, eliminates discrimination and gives them opportunities they heretofore have not had.

I know this committee can do the right thing. The government has to do the right thing. This will not go away. We need it restored. We'll have a better society for it, and we put you to that task.

The Chair: Mr. Kormos, 30 seconds. You're the only one.

Mr. Kormos: You then are making it quite clear that you believe that card certification is so important that it should be available to every worker in this province?

Mr. Forder: Absolutely.

Ms. Nash: It's fundamental to the freedom of association. You cannot have a fully exercised freedom of association—a non-discriminatory right in this province—without the right to card-check certification. We have example after example where we've shown that, and there are many other unions who say the same thing.

Again, I would challenge the committee, with respect, to justify why they would extend this important principle only to one sector of the workforce.

The Chair: Thank you very much for your presentation.

HUMAN RESOURCES PROFESSIONALS ASSOCIATION OF ONTARIO

The Chair: We'll move on to the next presentation, the Human Resources Professionals Association of

Ontario. You may start at any time, sir. You have up to 10 minutes.

Mr. Paul Boniferro: Good afternoon. My name is Paul Boniferro. I'm a partner in the law firm McCarthy Tétrault and chair of the provincial government affairs committee for the Human Resources Professionals Association of Ontario. We welcome the opportunity to provide to you advice on Bill 144, the Labour Relations Statute Law Amendment Act, 2005.

For those of you who don't know, HRP AO is a professional association for human resources professionals in Ontario. We have over 14,000 members across Ontario. We pride ourselves in not being an employers' organization, nor are we an employees' organization. Rather, we represent individual professionals who seek to promote the realization of human and organizational excellence in the workplace.

Let me state clearly and right at the outset that HRP AO has been and continues to be opposed to the reinstatement of automatic certification in the province of Ontario. We were asked by the minister to provide him with advice prior to the legislation. When we heard rumours of potential legislation coming out, we advised the minister that we thought it was bad and the wrong thing to do to reinstate automatic certification. When the legislation was introduced, we again, in a letter sent to the minister, reminded him of why the legislation was changed in 1995 and then later amended, and why we believe that automatic certification was not necessary in the province. Let me take you through a couple of our reasons for not supporting this legislation:

(1) Unions may be and are motivated to file unfair labour practice complaints in any certification drive in which they believe they do not have sufficient support to win a vote, and may use such applications as leverage against employers. I can tell you, as a practising labour lawyer in this area, that we're already seeing an influx in the number of unfair labour practice complaints in Ontario without the legislation even changing, which unions believe will give them increased leverage to resolve those matters in which they don't have sufficient support.

(2) We believe the employers' freedom of speech will be impugned, preventing employers from expressing their view with respect to the intervention of a third party in the employment relationship with their employees.

(3) The integrity of secret ballot vote within five days will be diminished, and we will return to instances where employees and their employers will become unionized despite a contrary result at the ballot box, as was the case in the Royal Shirt decision and the Wal-Mart decision, which have been mentioned earlier today.

(4) There will be an overall destabilizing of the balance of labour relations in an environment where employers risk significant consequences for breaching the Labour Relations Act and unions share no corresponding risk for that matter.

In terms of the previous presenter's comments, let me just say that while she had some very strong comments with respect to employers' conduct, stop and ask yourself

how much influence there is in the signing of a card in an organizing drive. Are there any undue influences on employees who actually sign a card simply to get the union organizer off their back and express a different opinion in the secret ballot election five days later?

(5) Experience in the period from 1990-95 has shown us that investors did not invest in Ontario as a result of labour relations legislation, including automatic certification.

The minister and his staff's response to us when we raised this issue to them was that that is purely anecdotal. I suggest to you that any reason for introducing this legislation is purely anecdotal. We have not yet heard one presenter say, "This is good legislation, government. Way to go. Thanks for introducing it." What is the motivation? I suggest to you that the motivation can only be purely anecdotal.

Let me turn to automatic certification for just a moment and say that we are not confident that proposed section 11 changes would address any of the concerns we've expressed regarding the reinstatement of automatic certification. Section 11.1 would permit the Ontario Labour Relations Board to dismiss a union's application for certification where the employer committed an unfair labour practice and where no other remedy would be sufficient to counter the effects of the unfair labour practice.

We are also concerned that the changes eliminate the democratic right of an individual employee to choose whether or not to join a union. You will recall the controversy over the OLRB decision in 1998 regarding Wal-Mart. In that case, the OLRB granted the certification order despite the fact that employees of Wal-Mart had voted 151 to 43 against the union in a representation vote.

I pause there and ask you to review that decision in its entirety and ask yourselves what Wal-Mart did in that particular instance and what their employees did to deserve a union when they had voted against it. They did three things:

First, an employee had spoken up at a morning meeting against the union. When an employee who was a union supporter went to speak up, he was told he couldn't speak at that time because the store had to open. Second, the question was asked by the employees of the manager, "What will happen? Will this store close if it becomes unionized?" Any labour lawyer, management side or union side at the time, would have told you that no employer in this province could get in trouble for not speaking. In that instance, Wal-Mart refused to answer the question. As such, they were automatically certified despite the 151 to 43 vote against the union.

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Not only do such orders strike at the heart of individual democratic rights to choose, which we know are important to your government, but it also leads to very unstable labour relations and bargaining relationships. We urge this government to seriously review cases at the OLRB where bargaining units were automatically cer-

tified under this provision prior to 1998, and the survival rate of those bargaining units and bargaining relationships. A bargaining unit that is created by a democratic vote of all employees, as opposed to the decision of a vice-chair at the Ontario Labour Relations Board, has a much better chance of success than one imposed upon employees by the OLRB.

Let me also comment on the card-based certification in the construction sector. Our members are not heavily based in the construction sector. Our concern is that this is the thin edge of the wedge in the sense that we believe there may be motivation for this government two years from now, in an attempt to be re-elected, to extend the automatic certification to other industries, which we believe will have a detrimental effect on the economy and jobs in Ontario.

Finally, we haven't heard much about the decertification posters. We believe it is a mistake to disallow the posting of decertification information in the workplace. Employees who no longer wish to be represented by a bargaining agent are entitled to take steps to decertify. It is helpful for those employees to have the information readily accessible in the workplace. We believe the elimination of these posters again is a strike at the democratic individual right of employees to know their rights in the workplace. We suggest that instead of eliminating the poster, you increase the amount of information provided to employees with respect to their rights in the workplace. This would be consistent with your recent initiative to provide employees with more information about their rights under the Employment Standards Act. We support providing employees with all information about all their employment rights under all relevant legislation.

Thank you for your time. Those are my submissions, and I'm happy to take any questions.

The Chair: There is time for a short question from Mr. Flynn.

Mr. Flynn: On page 3 of your presentation, around the middle of the page, I just wanted to be clear. It says you aren't confident that the proposed section would address any of the concerns, then you go on to say that the OLRB would have the right to dismiss a union's application for certification where it was proven an unfair practice had been committed. Why would that—

Mr. Boniferro: I believe that's a typo and I apologize for that.

Mr. Flynn: Should that read "employer"?

Mr. Boniferro: Right.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: We will move on to the next presentation. It's from the Ontario Public Service Employees Union: Terry Downey. Please start any time you're ready. You have 10 minutes in total.

Ms. Terry Downey: Good afternoon. My name is Terry Downey, regional vice-president of the Ontario

Public Service Employees Union. Tim Little is OPSEU staff.

OPSEU represents workers in every imaginable occupational group and every equity-seeking community across the public service, local agencies, the health care sector and post-secondary education. I will focus primarily on the major shortcomings of this legislation, in terms of what Bill 144 does and also what it fails to do to improve fairness and equity. The latter part of the submission before you addresses the government's section 98 amendments on the reinstatement of the interim powers for the labour board.

First, let me talk about card certification. In its current form, Bill 144 is fatally flawed. It should be amended or defeated. The McGuinty government has put forward legislation that is racist and sexist in its selective reinstatement of the long-standing card certification provisions of the act. You've heard a lot about this. You need to hear a lot more.

Tens of thousands of women, visible minorities and workers with disabilities whom I represent have struggled against discrimination all their working lives. It has taken years to achieve some measure of pay equity, equal access to better jobs and higher education and to start rolling back a host of barriers to equity. Believe me when I say that that struggle continues.

But for the past 55 years, with the exception of a few dark years after 1998 under Mike Harris, one thing we could rely on was access to free collective bargaining if we signed up 55% of our co-workers. Card certification, even in the face of intimidating employers, gave us the opportunity to sit across from our employers and negotiate on a reasonably equal footing.

So why is the McGuinty government discriminating against workers in every other sector of the economy? Why don't you believe that modest wage earners deserve equal access to a union? Why omit those employees who are predominately women, visible minorities and new Canadians from Liberal labour law reform?

OPSEU urges the Liberal caucus to stop looking nervously over their right shoulders for the responses of the corporate sector. It's not massive corporations like Wal-Mart that you should be supporting with your labour legislation. With the billions of dollars they have to fight off union organizing efforts, they need no help from Queen's Park.

It's not only giant trans-national corporations that thwart the expressed interest of their employees to join a union. For OPSEU, our Wal-Mart is the Ontario Lottery and Gaming Commission. Recently at Woodbine Race-track, operated by the commission, a clear majority of employees—well over 60%—signed cards to join OPSEU and gain the right to bargain collectively. These workers speak at least seven languages. They include many visible minorities. In the absence of card certification under the act, a vote was arranged. For the next five days the employer repeatedly used interference, coercion and intimidation to combat the expressed interest of its employees. The employer's campaign was very

aggressive and, sadly, it was successful. The certification vote showed that OPSEU's support had dropped dramatically in one week, from over 60% to just over 30%.

Illegal employer schemes to subvert union organizing efforts and reverse the stated interests of their staff are a regular occurrence. Instead of rewarding the covert union-busting tactics of the Wal-Marts of this world, it's time you stood with equity-seeking communities in Ontario. It's only fair that you permit amendments to Bill 144 to extend card certification to all workplaces that were covered before the Conservatives imposed changes to the act in 1998.

To maintain the prohibition on card certification for most workers that was initiated by Mike Harris helps to perpetuate the low-wage sectors of the economy. Unorganized workplaces are where we find less access to fair wages and health care plans, less protection from abusive employers, fewer workers with pensions and dignity in old age, higher rates of workplace injuries and more discrimination at work.

Believe me, this is no less true of the public sector than it is of the private sector. What does the McGuinty government find attractive about labour legislation that bolsters the low-wage economy? These measures certainly won't help attack your \$5.6-billion deficit. In fact, they exacerbate the stress on the public service. Ask any of our members who work in social services, health care, rehabilitation, social housing and services for seniors; they will tell you all about the fallout when families struggle to find good jobs.

One thing is for sure: This draft of Bill 144 doesn't help with your promise to rebuild public services. It is a good-jobs economy that helps most to build a healthy economy.

I'll turn now to OPSEU's alarm about two areas of needed labour law reform that have been omitted from Bill 144.

Reinstatement of successor rights: As direct employees of the province, 40,000 OPSEU members fully expected to see amendments in Bill 144 that would end discrimination against them. Under the Labour Relations Act, for most unionized workers, if their job is transferred to another employer, they have the right to follow their work and hold on to the provisions of their collective agreement. This is known as successor rights. It's designed to prevent employers from subverting the rights of employees by simply selling an enterprise to another employer where there is no union. In other words, where work is contracted out by one employer to a subcontractor, for example where a company loses a tender to continue specific operations, the affected employees are protected under the act from arbitrarily losing the working conditions, wages and benefits that they have already negotiated.

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This was the case for the Ontario public service from 1974, under the Crown Employees Collective Bargaining Act, until this right was stripped from us 10 years ago. The result has been an onerous effort by OPSEU to

repeatedly reorganize former members and enter into protracted negotiations with many private sector enterprises and local agencies that are delivering offloaded public services. Skilled and seasoned public employees find themselves with no job security. New employers, who should be focused on services to the public, instead scramble to cope with labour relations chaos. Time and time again, the public suffers. Need I invoke anything more than the words "Municipal Property Assessment Corp."—MPAC—to make this point?

Or take the just-announced divestment of Ontario's emergency air ambulance dispatch as another example. Offloading this vital health care service, aside from the obvious concerns about public safety, means that without successor rights, all these experienced public employees start from scratch with a new employer. They will have no negotiated wages, benefits, hours of work or seniority rights. The jury is now out on how well this vital service will operate in the future.

Cutting off public service workers from their successor rights is another part of the Harris-Eves legacy. Eliminating our right to follow our work was a tool used to undermine the role of the public sector. Since the Walkerton water disaster, most people are aware of the province's experience with privatized water-testing facilities and meat inspection. We urge the government not to subject even more vital services to the vagaries of privatization, particularly where no employee successor rights exist. Reinstating successor rights for public employees is integral to rebuilding our public services.

As with successor rights, it's about time to put an end to the many years of discrimination against part-time employees at Ontario's community colleges. Part-time community college workers are barred from joining a union under the Colleges Collective Bargaining Act. According to the United Nations, this legislated ban is a violation of their fundamental human rights. This is a frustrating and long-standing anomaly in Ontario labour law. Virtually no other front-line workers in any sector of the economy are denied access to free collective bargaining. Comparable part-time workers in Ontario universities and secondary schools, for example, enjoy all the benefits that flow from being able to join a union.

Part-time college employees do important work that is indistinguishable from that of their full-time co-workers. OPSEU is convinced that this double standard, including the lower wages and arbitrary treatment experienced by thousands of part-time college employees, is adversely affecting the quality of education that college students receive here in Ontario.

Therefore, in addition to the amendments to extend card certification, OPSEU urges the government to make changes to Bill 144 to end these two additional types of discrimination. The government should permit public service employees access to the same successor rights as those outside the public service, and it should remove the statutory ban on unionization for part-timers found in the Colleges Collective Bargaining Act.

Lastly, but no less importantly, OPSEU is deeply discouraged that the government has chosen to preserve the

Conservative-era labour code amendments that returned scab labour to Ontario workplaces. We had hoped the Liberals would embrace the merits of less confrontational strikes in Ontario.

The Chair: Thank you very much for your presentation. There is no time for questioning. Thank you for coming.

Ms. Downey: Thank you. We urge you to look at the rest of our documents.

UNITE HERE CANADA

The Chair: The next presentation is Unite Here Canada. You can start any time you are ready.

Ms. Alex Dagg: We're here on behalf of Unite Here Canada. I'm Alex Dagg, the Canadian director of Unite Here. I have with me Nirmal Randhawa, who is an executive board member here in Ontario.

We're a trade union that has over 20,000 members in Ontario. Our members work in hotels, food service, apparel, textiles, general manufacturing, apparel distribution centres and industrial laundries. Unite Here's diverse membership includes many recent immigrants and a high proportion of women.

I'm here on behalf of our membership to say that Bill 144 must be amended. Bill 144 as it is currently written would set up a two-tier system of rights for the citizens of Ontario. There would be one set of rights for construction sector employees and a far weaker set of rights for everyone else. One group of working people would have the right to choose union membership under a system that would reduce the capacity of employers to intimidate them, while everyone else would remain under the United States-styled system set up by Mike Harris and the previous government.

While there certainly are women and visible minority workers in the construction sector, there are vast sectors of our economy where there are much higher proportions of female employees and employees who are new Canadians. Bill 144 will keep them mired in the Mike Harris system, and that is just not defensible.

Our union's membership is predominantly female and a visible minority. They wonder why this Liberal government would relegate their friends and family members to a second-rate system and a second-rate set of rights. They thought that this government was elected to repair the damage to the fabric of Ontario caused by Mike Harris and his regressive advisers. As for members of the Conservative Party who express such seeming worship of the vote process, let me say that probably none of them has ever been a worker who has had to experience the onslaught of an employer bent on cajoling, intimidating and scaring employees into voting against union membership. And I bet that none of them has ever actually experienced a union membership campaign in the environment put in place by the Mike Harris government.

This government has a very clear decision to make about Bill 144: It can do the right thing by looking to the examples of Bill Davis, David Peterson and even to

Premiers as different as Bob Rae and Frank Miller, or it can do the wrong thing, the very thing it was elected not to do, and follow the example of Mike Harris. If this government does not provide a card-based system of union choice to all Ontarians, it will be enshrining and preserving the keystone of Mike Harris's erosions of the Labour Relations Act.

I think that some members of this government do understand that the Mike Harris version of the Labour Relations Act is far too weak to provide real rights to working people. They get it, but there's a real difference between getting it and doing something about it. Bringing back remedial certification and interim reinstatements is necessary, but not sufficient to provide real rights for working people in Ontario. I urge this government to amend Bill 144 to provide for the card-based system of union choice for people in all sectors of the economy.

I would like to introduce Nirmal Randhawa, who is going to talk a little bit about his experiences. He works at a factory in Mississauga called Silgan Plastics.

Mr. Nirmal Randhawa: Good evening, everyone. My name is Nirmal Randhawa. I came to Canada in 1991. I work for a plastics manufacturing company named Silgan Plastics Corp. This company is a billion-dollar company.

I joined this company in 1992. At that time, it was called Express Plastic Containers. When I joined the company, the working conditions were really bad. Women were abused by male supervisors. We thought to organize a union, when we talked to our brothers and sisters. I was new here, and they told us not to talk about a union at your workplace or you would be fired—the job market at that time was really very bad because of NAFTA.

Some years later, in 1995, the Silgan corporation took over and we thought the working conditions would change. But these big corporations only care about the dollar; they don't have any respect for human rights and for the dignity of workers. The same things were going on.

Finally, in the year 2000, we decided to organize a union. We contacted Unite Here, which we knew represents female and immigrant workers. We talked to them. In 2000, we ran our campaign. When we were in the organizing campaign, we realized how difficult a task it is. In our company, more than 70% of the workers signed cards over the weekend—we started to sign cards on Friday and we finished on Sunday. More than 70% of the people signed the cards because the card-signing was totally secret and was done at their homes.

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When we went back to our company on Monday, things were different. The employer had all the rights to intimidate and threaten workers with losing their jobs. They took us, one by one, into the office. They did everything from intimidation to telling some workers that they would get more money. They tried everything to break people. Despite that—that whole week was sleepless for us—we had another campaign. On Monday, we

had the vote, and the employer was sitting in front of us. We feel that voting system is not democratic at all. The employer was sitting and looking at us and we were thinking that the three people who were there from the labour board—we didn't know who they were—would tell the employer who voted yes or no.

When we heard about Bill 144 amending this law and we heard that construction workers are going to get the right to join a union only by signing the cards and that garment manufacturers are not, we felt really bad and we thought we were being treated as second-class workers and citizens. I request this government to do the right thing and provide fairness to all workers, not just some of us.

The Chair: Thank you very much. There is about a minute and a half. Would Mrs. Witmer want to start?

Mr. Kormos—30 seconds each.

Mr. Kormos: I understand the Conservatives' position. They don't want card-based certification for any worker. They believe—and I disagree with them—that card-based certification is flawed, that it isn't a true representation of what the workers want. Look, I don't begrudge building trades workers card-based certification. It seems strange to me that the government somehow must feel there's something flawed around card-based certification because they won't extend it to the broadest range of workers, yet it's not flawed enough to deny it to building trades workers. That's my problem. I'm looking for that answer, as Mr. Arnott would say.

The Chair: Thank you. Now, I'll give the opportunity to the government.

Ms. Wynne: I just want to ask a question about the voting process. I hear your concern about card-based certification. We've heard that argument a number of times. But can we just talk about what could be done to tighten up the voting process? Can you give me some comment on that?

Ms. Dagg: Perhaps Nirmal can add a little bit too, because of his experience, but our position is that we don't think there should be a voting process because we don't think that's fair. We're saying there should be a card-based certification system for all. A vote takes place on the employer's premises. There is incredible ability for the employer to campaign during that period of time, which is what's happening. It needs to be a card-based system. You've done part of it already for construction workers. You need to do it for all.

Ms. Wynne: I understand that.

The Chair: Thank you very much. Mr. Arnott, do you want to say anything?

Mr. Arnott: Why do you think the government is prepared to extend card-based certification to the construction sector and not the rest?

Ms. Dagg: I'm not sure I can speak for the government as to why they've done that.

The Chair: Thank you.

Ms. Dagg: I would like the answer too.

The Chair: The 30 seconds are over. I think you asked the question and you got an answer.

DAVID JAKES

The Chair: We'll move on to David Jakes, business owner. You may start any time you're ready. You have 10 minutes.

Mr. David Jakes: Good afternoon. It's a great favour to be selected to speak today. I would like to thank the standing committee for their choice. I would also like to thank all present for their attention at this time. This opportunity being made available is reassurance that today we live in a democratic society.

I am perhaps here on a different basis than many others. I'd like to introduce my wife, Jeannie Jakes, who came along with me. I'm David Jakes, an Ontario citizen all my life. I am familiar with our people, cultures and economy. I would like to draw attention to the vast number of races and religions that make up the people of our province. I am a member of a worldwide fellowship known as Brethren, who believe in the Lord Jesus Christ as the Son of God and who seek to follow His Word as set out in Holy Scripture.

I realize there will be persons present today who know the Lord and believe in God, and it is not my intention to in any way challenge or set aside anyone else's link with God. We know that God's love is toward all men, and it is a great victory when someone is bowed by it. As for the stand I take, the fellowship of God's son is the only level or basis at which I will be joined with others. Organizations of unions and associations are such that membership would violate my personal conscience, as an unholy link with unbelievers and those with whom I do not partake of the Lord's supper.

Firstly, I would like to call attention to the Canadian Charter of Rights and Freedoms. The charter begins with:

"Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law ...

"The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it, subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society ...

"Everyone has the following fundamental freedoms:

"(a) freedom of conscience and religion;

"(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

"(c) freedom of peaceful assembly; and

"(d) freedom of association."

Thus read the first three paragraphs of our charter. The government has clearly stated in no uncertain terms the freedom that is granted to all Canadians, all residents of Ontario and all races and religions. The charter also states, "Every citizen of Canada and every person who has the status of a permanent resident of Canada has the right ... to pursue the gaining of a livelihood in any province."

Having said these things, I would like to raise the question, how does the provincial government intend to protect the people's right to freedom of conscience and religion in the light of Bill 144? I will explain my ques-

tion. Section 52 of the Labour Relations Act states that provision may be made on the basis of religious conviction or belief. However, this provision is only granted when the board is satisfied that an individual qualifies for such exemption.

This hope is as promising as a tunnel without any light at the end of it. There is no way of even knowing how long this process may take. Does the government intend to pay a person's mortgage, feed their family and pay their bills while that person is subjected to going before a ruthless organization that would readily snuff out a person's livelihood?

In addition, there is as of now no provision for employers. This is something that has to be addressed. It is the duty of this government to exercise its God-given authority to protect the rights of both employee and employer with no third party involvement. The direct relationship between master and servant is set out in scripture, and we uphold this principle in our business arrangements. The scriptural basis is Ephesians 6:5-9.

Perhaps the greatest difficulty I have with this proposed amendment is that the government, as elected and accountable to the people of Ontario, would be transferring further authority to an unelected body that interferes with individuals' personal rights and freedoms without accountability.

The government must state clearly the terms for exemption from union certification for employees and employers alike, and the authority to execute this judgment must be left with government officials with the tools at their disposal to act immediately for the protection of individuals.

In the small family business in which I am an active partner, we have proved the virtue in maintaining good relationships with our employees. They are rewarded with wages and benefits more typically seen in much larger corporations. This has enabled many of our workers to buy their own homes, pay off mortgages sooner and provide a living for their families better than they formerly did. Should our company ever be threatened with union certification, our only option would be to close down the business, destroying loyal relationships developed with our employees and customers. Obviously, this is not in the best interest of any of us, especially those directly involved. This would not be an easy decision but one that would be forced on us. Acts 5:29: "God must be obeyed rather than men."

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In summary, I would ask on behalf of all those who share similar convictions that our provincial government consider the social and economical ramifications of such potential situations. We simply ask that the government respect the voices of those who elected them and carefully analyze every angle of this bill. A clear clause for conscience must be inserted for the protection of all parties.

Once again, I appreciate the attention of all present. I trust that the concerns I have voiced will be respected. Thank you.

The Chair: There are 30 seconds each, maximum. Mr. Kormos?

Mr. Kormos: We heard from folks yesterday who had views very similar to yours. You came from Kingston?

Mr. Jakes: Yes.

Mr. Kormos: We appreciate your coming to Queen's Park.

Mr. Jeff Leal (Peterborough): Just an observation. It's interesting: Jean Marchand used God's scripture in the mid-1950s to organize workers at Thetford Mines in Quebec when they were being hit over the head by the owners of asbestos mines. So it's interesting how God's scripture was used in two different circumstances, to support, in that case, a union movement. I'll leave it at that.

The Chair: Thank you very much. The opposition, Mr. Arnott.

Mr. Arnott: I don't have any questions.

Mrs. Witmer: I want to thank Mr. and Mrs. Jakes for appearing before us today and coming from Kingston. We've heard other people, yesterday and today, who have come and who are, I think, your brethren. Is that—

Mr. Jakes: That's right.

Mrs. Witmer: You've expressed the fact that you would like a clause, I guess, inserted in the legislation, a clear clause for conscience to protect all the parties. I think all of you are asking for basically the same thing?

Mr. Jakes: That's correct. We feel that there needs to be, there must be, a clause for employers, employees.

Mrs. Witmer: Thank you very much for coming.

The Chair: Thank you very much, sir, for coming, and to your wife.

I will move on to the next presentation, the Canadian Federation of Students, Jesse Greener.

Mr. Flynn: Could I take 30 seconds? Before the last delegation leaves, it was pointed out by Mr. Kormos the sort of mileage that the last presenters must have travelled to be here with us this afternoon. It was his suggestion, and one that I'd certainly support, that some allowance be made for that by the committee.

Ms. Wynne: Mr. Chair, I believe the subcommittee agreed that that would be appropriate in those circumstances.

Mr. Kormos: Ms. Stokes can deal with it.

The Chair: So we will leave the clerk to deal with the matter. Thank you.

CANADIAN FEDERATION OF STUDENTS

The Chair: We'll move on to the next presentation, the Canadian Federation of Students. Mr. Greener, you have 10 minutes. Please proceed.

Mr. Jesse Greener: It's nice to see those of you whom I know, and greetings to those whom I haven't yet met. My name is Jesse Greener. I'm the Ontario chairperson for the Canadian Federation of Students, representing 250,000 students and the interests of their families across this province.

I'd like to start by just welcoming the changes that are put forward by Bill 144. We certainly are happy to see the repealing of the union decertification posting requirements. We welcome the reintroduction of meaningful incentives to discourage undue interference with workers' rights to join trade unions by giving the OLRB the authority to automatically certify a trade union. We welcome the restoration of the OLRB's authority to reinstate an employee who is dismissed or otherwise penalized for exercising his or her right to pursue union representation. Of course, we welcome the extension of automatic card certification to employees in the construction industry.

While these changes are welcome, we believe that they don't go far enough to ensure that all workers have equal access to pursue union representation. While extending automatic card certification for those in the construction industry is a critical step forward for the workers in a constantly changing and transitory occupation, other workplaces, we believe, deserve the same treatment. Arguments for extending automatic card certification are what I would like to talk about next.

In an unbiased world, both parties, the employers and the employees, through their trade unions, should be seen as neutral players who intervene to allow workers to express their democratic wishes, whether or not to be represented by a trade union. Likewise, expressing this desire should be a simple matter of demonstrating this intent. In other words, simply signing a unionization card ought to demonstrate the sufficient clarity of the individual's desire. Likewise, the absence of a signed card ought to demonstrate with sufficient clarity the individual's desire not to be represented by a trade union.

At best, having a vote after card certification adds a new and cumbersome layer to the process for workers attempting to secure union representation. At worst, the democratic expression by workers of their desire to join a union is itself under scrutiny. For example, questions such as whether the workers knew what they were doing or knew what they were getting into etc. undermine the democratic process, and frankly, this undermines the workers' intent in going into the card-signing process by asking these questions again through a subsequent vote. Asking them one more time to express themselves through another vote would presume that the existence of a signed card is insufficient to determine the will of the employees.

In the real world, however, there is no freedom of bias. I've demonstrated, I think, our perspective as to why there should be card certification even in an unbiased world, but in a biased world we know there is a difference of interests between the employer and the union. They don't always correspond.

In truth, there are significant differences between unionized and non-unionized environments. Workers in unionized workplaces tend to have higher levels of pay than their non-unionized counterparts. Workers in unionized workplaces tend to have better employee benefits than their non-unionized counterparts. The Ontario

Workplace Health and Safety Agency found that nearly 80% of unionized workplaces reported high compliance with health and safety legislation, compared to about 55% for non-unionized workplaces. Another Canadian study conducted in the early 1990s found that union-supported health and safety committees have a significant impact on reducing injury rates. This is in part due to the fact that workers feel more confident to refuse unsafe work if they know they have access to dispute resolution mechanisms should the employer take punitive measures against the employee who refuses the unsafe work.

In an ideal world, employers and trade unions would work together to facilitate unionization in order to raise wages and improve living and working conditions. However, we know that in the real world higher wages cost money. Improvements in working conditions and health and safety compliance also cost money. Consequently, some employers are reticent about having unions represent the employees in their workplaces, and employers can sometimes interfere in workers' right to unionize.

This can especially be true for small service sector workplaces, where often the working conditions are close to the employer and the employer may take it personally if workers seek to have union representation. As is recognized by other changes implemented in Bill 144, the employer can, and often does, interfere with the ability of workers to seek union representation. If these issues exist in larger workplaces, then the pressure is even greater in smaller workplaces, making it much harder for individuals to express their desire to join a union. In the same way that employees may feel less confident to object to unsafe working conditions in small non-unionized environments, so too do employees feel less confident about expressing their desire to join a trade union.

I'd like now to focus on young workers' safety. As we represent younger folks in the society, we have an understanding of young workers' interests. Having rights and being able to exercise your rights are two different things, especially for young workers. It's hard enough for young people, many of whom are trying to earn money for school, to get a decent job, let alone be the new person on the job, largely in a summer working capacity, who is making a fuss about health and safety. A union can create the kind of buffer to allow the young worker to recognize and possibly refuse to undertake the unsafe work.

What does young worker safety have to do with Bill 144? Every day in Ontario an average of 42 young workers are injured on the job. There is a documented link between unionized workplaces and reduced workplace injuries, yet the jobs in which young workers often find themselves are typically not unionized, such as fair and carnival workers, hotel and restaurant staff and other small workplaces. In fact, these are also the kinds of jobs where we find recent immigrants and single parents overrepresented. These are the kinds of workers who, as Statistics Canada notes, are not maintaining their earnings. Extending automatic card certification to the construction industry is indeed a critical step forward,

especially in regard to health and safety issues. However, many injuries occur in the restaurant and service industries as well. Removing an unnecessary barrier such as an additional vote after the initial vote would go some distance in ensuring that workers, even in small workplaces, could also have democratic access, which would well serve to expand the number of unionized workplaces and therefore reduce the number of injuries across the board.

The Chair: Thanks very much for your presentation. There is no time for questioning, but thank you very much.

1730

TORONTO AND YORK REGION LABOUR COUNCIL

The Chair: We'll move on to the Toronto and York Region Labour Council, John Cartwright.

John, have a seat. You have 10 minutes in total to make your presentation. If there is time, we will allow some questions for you and the lady.

Mr. John Cartwright: Thank you, and good afternoon. My name is John Cartwright. I'm the president of the Toronto and York Region Labour Council. With me is Bhupinder Sanghera, who's on the executive board of the Toronto and York Region Labour Council and an organizer and rep with Unite Here.

Bill 144 has some pieces in it that we think are useful and start to heal some of the damage done by the previous Mike Harris government. That, in itself, is fine.

We start from two positions on the question of labour law reform in front of you. The first is that for you to restore all the rights of working people that Mike Harris took away would not cost this Liberal government a dime. It wouldn't cost you a dime. It would not cost you any votes, because working people would be happy that you did it. So we wonder why you can't do that, why you can't restore the rights of hard-working people that Mike Harris took away. You asked us to choose change; as voters, we did so. Why are we only getting a quarter of a loaf instead of what was there before?

The second piece is, why do we say that? It's very simple: In greater Toronto today there are over one million workers who earn less than \$29,800 a year. Some 85% of them are full-time, and this is one of the most expensive places in this country to raise a family. Over a million workers earn less than \$29,800 a year, and they're in the front-line sector all over the place. They're in health care, they're in home care, they're in child care, they're in social services, they're in hospitality, they're in light manufacturing.

We held a series of meetings around the tsunami crisis and how to respond to that. A number of our union members are Tamil and come from Sri Lanka or Malaysia. There was a fellow sitting across the table from me who was a manufacturing worker—had been in a unionized environment for nine years—raising four kids on \$9.80 an hour. That translates to less than \$20,000 a

year. Is that the kind of thing that you as the government feel is all right? The fact that working families' incomes dropped in the last decade of the 20th century—on average, in real wages, two-income families dropped 13%; single-income families dropped 17%. Is that the kind of thing you want to see happen?

It's very clear that if you want to correct that and give people a chance to raise their standards, the ability to have a union and to have the tools to get a union, if people wish, is a crucial element. Unions are the best anti-poverty program. They're the best anti-discrimination program. They're the best program for any government to invest in, because it doesn't cost it a penny.

We lay out a number of things that have to be done in terms of restoring all those different rights. The main focus, as I'm sure you've heard from many different unions, is about extending the right to organize through card-check to every sector of the economy. We say that because it's crucial.

I'm a construction worker. I was a business manager to the central Ontario building trades council for 10 years and I know what happened once the law was changed and people were required to go through a vote. I salute the government for understanding that that had to be fixed, because it was a travesty. But what I found in these last three years as head of a labour council is that, in sector after sector as I deal with workers, many of the same issues face those workers as faced me as a construction worker and the folks I represented. The elements of contingency, of unstable work and so on, are all there in all kinds of other sectors. The crucial element is, how are people going to have the tools to better themselves? That's the crucial question. And that five days of a vote period is a reign of terror that's instigated on most workers in most workplaces. We've gone through a whole number of examples of that, and I'm sure you've heard that from elsewhere.

Last November, we held two forums in Toronto to hear what non-union workers are going through. We selected 10 stories and put them in a book of shame, which we've passed out to you as well. That kind of stuff that's happening to the hard-working people in this city in the 21st century is unbelievable. It should never happen.

In two days, we celebrate the day of mourning. We're going up to Woodbridge that morning in front of the monument where Italian workers have been killed. People gave their lives because they thought they could make something better for their families, and yet the only way they found they had power to actually make a difference was by having unions to stand up for them. That's why, if this government cares about people improving their lives, they'll do that.

Bhupinder is an organizer, and the kinds of things she runs up against in real life when she's talking to workers about joining a union are what you have to hear, and you have to answer to yourself: Is this what you want to be happening to your constituents, your family, to the future workers of Ontario?

Ms. Bhupinder Sanghera: My name is Bhupinder Sanghera. I'm a Unite Here staff rep, plus an executive member at the Toronto and York Region Labour Council. I sit on the Brampton-Mississauga and District Labour Council as an executive member too.

I have been in Canada for 29 years, and I was involved in organizing a union when we had automatic card signup certification. I am involved now in organizing a union where we have to go through a vote. The difference is amazing.

I organized when we signed the card. When members signed a card, they made a commitment. But now, if people phone me—and a lot of people do, because I speak three or four different languages. A lot of women phone me because Unite represents a lot of immigrant women with low wages. They phone me and say, "Keep it secret. My employer should not know that I am phoning you. We do need a union. Our health condition, the intimidation and harassment at the workplace—we have to have a union." When we go to approach those employees, we sign hidden cards, but people beg us and say that their employers should not know. Otherwise, they are going to fire them. We tell them that to organize a union is their right, to not be afraid.

One of my colleagues shared his experience. When they go to work, they are intimidated. They are threatened by employers that they are going to close the plant. People who work for \$8 or \$7.50 or \$9 an hour don't want to lose their jobs. So sometimes about 80% sign the card. I had an experience in Brampton and Mississauga with some companies. When it came to voting, we lost the vote.

I just want to request that people should not be afraid to have their job protected. They should have a right to form a union and have the freedom to go. Once they sign the card, they make a commitment. They should not go through this vote. People work with supervisors and bosses and are afraid to lose their jobs. They have to feed their families. So they don't take a chance to go vote and form a union, even if they want to have a union.

Mr. Cartwright: So what I'm going to say in conclusion is this: Anybody who says, "What's wrong with a free vote?" should look at page 4 and understand what happens in a workplace. There is no such thing as a free vote when there's no right of free speech, no right of free assembly. When people have to do things in secret, when the governing party controls everything that happens in people's lives, there is no such thing as a free vote, and anybody who suggests so has never been through a union drive and lived the life that is there.

Secondly, you have an opportunity to help people improve their lives. You can choose to either be on the side of Wal-Mart, which shows its contempt for everything that Canadians are about—our laws and the standards that working people want to have—or you can side with working people.

We thought, when you were elected as a government, you were going to be on the side of working people. You have a chance to show that with amendments to Bill 144.

The Chair: Thank you very much for both your presentations. There is no time for questioning, but we thank you.

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INTERNATIONAL ASSOCIATION OF HEAT
AND FROST INSULATORS AND ASBESTOS
WORKERS, LOCAL 95

The Chair: We'll move to the next presentation, from the asbestos workers, Local 95. Is Fred Clare present?

Please have a seat, sir. You can start any time you're ready. You have 10 minutes in total.

Mr. Fred Clare: I don't think I'll take 10 minutes of your time. I'm sure you've heard pretty well everything over and over again. However, let me give you a little bit of my background. I'm the business manager of the International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, and also a member of the building trades. My local covers the whole of Ontario. I'm a new business manager and a new agent; I've just been involved over the last four years. However, my background goes back extensively, for the last 35 years, in the construction industry.

The construction industry is a unique situation. After the job is finished, the workers are either transferred to other sites or laid off. This in itself creates a problem when those workers want to have the protection of a union and have a union speak up for them. The word "balance" has been used an awful lot since this government took office; democracy, fairness. Again, I applaud the government in looking at our situation as far as organizing the unorganized.

One of the worst feelings I ever had, not only as a union rep, was a situation in the Sarnia area where we tried to organize a company. Over 85% of the employees in the company signed to join the union. The employer at the time was elsewhere. He was in a pool tournament, I believe, in Las Vegas. When he found out what was going on, he flew back and hired, on the day of the certification, relatives and people he knew. For four hours, they were on his payroll. I could not believe that they counted as part of the bargaining unit just because they had been on the job site that particular day. I couldn't believe that nobody said, "Obviously, you're trying to make a mockery of the system." However, that's exactly what happened.

The construction industry needs card-based certification. I feel for every other representative in here. I have the greatest and utmost respect for members sitting around this table—Peter; Wayne Samuelson back there—but our situation is dire. I would like to see that this bill is put forward and passed. That's all.

The Chair: Thank you very much. There are one and a half minutes each, if there are any questions.

Mr. Flynn: Thank you, Mr. Clare, for your presentation. We've heard from a number of groups, and I'm starting to feel a bit like Goldilocks—it's either too much

or it's not enough—but you seem to be saying that it's about right. If I understand what you've said, you agree that we should bring back remedial certification and interim reinstatement and get rid of the decertification posters and salary disclosure. Your preference, as I understood, would be to have card-based certification for all, but failing that, to have it in the construction sector.

Some other groups have come forward and said, "Either amend this bill or defeat it." Would you agree with that?

Mr. Clare: I cannot sit here and say, "I need this bill. I really need this bill." That's the bottom line.

Mrs. Witmer: Thank you very much, Mr. Clare, for your sincere presentation. Would you just tell me one more time why you need this bill?

Mr. Clare: Fairness, democracy. The workers who want to join a union should have that right, without interference from a contractor who obviously comes in and interferes with the process.

Mrs. Witmer: What about the intimidation that is sometimes experienced by people on the other side? I don't know who they might be. But we heard about that yesterday, intimidation of employees. How do we guard against that?

Mr. Clare: Intimidation from the unions?

Mrs. Witmer: Either from other employees or union organizers. That's what we heard yesterday. We heard about it in the drywall sector.

Mr. Clare: Speaking for myself and my organization, intimidation is not part of our way of saying, "We will represent you." How can I say to somebody, "I want to represent you," if I'm going to be intimidating? Those days are gone. How about intimidation from the employer? This is the reality.

Mrs. Witmer: I think it happens on both sides, Mr. Clare.

Mr. Kormos: Thank you, Brother Clare. I appreciate your coming here. I hear what you're saying. You'd be a darn fool not to ask this government to pass this legislation. You represent your workers, who are in the building trades, and this grants card-based cert to the building trades.

The Tories are very clear: They don't think card-based certification is fair or democratic. You obviously disagree with that.

Mr. Clare: I do.

Mr. Kormos: You think that card-based certification is fair, that it's an accurate reflection of what workers in a particular workplace want.

Mr. Clare: Exactly.

Mr. Kormos: And it's a legitimate way of assessing that. Then why, in God's name, wouldn't this government give card-based certification to every worker in this province, if it's a fair way of assessing the will of those workers? My goodness.

The Chair: Any comments?

Mr. Clare: I agree with you, Pete.

RESIDENTIAL CONSTRUCTION COUNCIL OF CENTRAL ONTARIO

The Chair: We have another presentation, the last one for the day, from the Residential Construction Council of Central Ontario: Mr. Richard Lyall.

Mr. Richard Lyall: We appreciate this opportunity to speak with you about this bill. My name is Richard Lyall, and I'm joined by my colleague Jason Ottey. We're here on behalf of Rescon. Rescon is an association of residential high-rise and low-rise builders. It has a number of affiliated associations, including ORCCA, TRCLB, DRCLB and the MTABA, which are directly involved in collective bargaining, and all of which have expressed their support for the bill.

Given the understandable time constraints, my remarks will be largely concerned with what we consider to be the bill's most important aspect, which relates to the residential sector of the construction industry. As you know, the bill would make permanent provisions concerning how collective bargaining is conducted in the GTA-central Ontario area. These provisions address a distinct and complex problem in a unique industry. In other words, it's not a system which can be readily applied to other sectors.

Yesterday, Mr. Jim Murphy of the GTHBA outlined the economic importance of the home-building industry in the province. He referred to the positive impact that the collective bargaining provisions have had, especially on the new home and condo buyer. He noted that the two test rounds of bargaining under the new system, in 2001 and 2004, demonstrated without a doubt that it works. We agree. In addition, I would like to elaborate further on what the labour and management authors of the solution actually accomplished.

For starters, the residential provisions are the product of considerable creative thinking and personal commitment on behalf of both labour and management, along with the invaluable assistance of government officials. All parties had to overcome biases and preconceived notions of what was possible in collective bargaining. All the parties involved had to exercise considerable trust and take singular and collective risks, given the new ground being crossed.

In total, the effort was simply unprecedented. Their trust was not betrayed. This in no small way has contributed to the fact that the industry has quietly worked in comparative harmony over the past six years, making a lasting contribution to the economy.

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What else has it meant aside from the obvious economic benefits for all parties? I have two examples. First, it has provided badly needed protection for new homebuyers. It has eliminated the fear many new homebuyers once held with respect to market stability. It has saved others less knowledgeable from a rude awakening of facing unscheduled homelessness on their own.

Second, the certainty and transparency of the new process has contributed enormously to the ability of

labour and management to attract young people to careers in construction. Make no mistake about it, eliminating the reputation for frequent disruptions has made the industry that much more attractive a career choice. It has helped crush the assumption that young people are not interested in careers in construction. Stability is particularly important for younger people at the beginning of careers when they are starting families and buying their first homes. This is important. As we know, homes are the single biggest purchase for the vast majority of Ontarians.

Some of the other provisions of the bill are obviously more contentious and will remain so regardless of what we or others might think, or what the outcome will be. With respect to balancing labour relations in the province, we do not presume to know where exactly the line should be drawn, or if one indeed exists. We can say that construction is a unique sector, as evidenced by its special status in the Ontario Labour Relations Act. Also, labour mobility issues in construction are unique compared to the relatively more sedentary characteristics found in other settings.

Having noted this, the two issues in particular that stand out are card-based certification and remedial powers.

The provisions concerning card-based certification are well known to the residential construction industry. In our view, contentious certification cases will still invariably result in extensive litigation, regardless of whether there is a secret ballot or a card-based process. We would note the fact that our industry has performed well under both regimes.

The bottom line is that there are valid arguments which support both approaches. In construction, with its unique mobility issues, there are particularly good reasons to support card-based certification. In our view, at the end of the day, the Legislature is in the best position to determine what is needed to ensure fairness.

With respect to remedial measures, the record in our industry would show that neither labour nor management can claim to have clean hands with respect to incidents of abuse in organizing drives over the years. That is why further OLRB remedial powers are considered necessary by many. In our opinion, the maintenance of fairness and the rule of law both require strong balanced remedies. Because the remedial powers would determine what might otherwise happen, they should only be applied after careful consideration of the particular facts and legal jurisprudence, and in the end, be neither arbitrary nor discriminatory.

The integrity of a system requires the utmost care and respect on the part of those charged with determining outcomes. While the rules applied must be as balanced and as fair as possible, no law can make that certain.

In closing, the residential provisions of the bill demonstrate that great things can be accomplished in labour-management relations with sufficient creative thinking and courage. It is rare when complex problems can be resolved with such convincing results. For this reason

alone, the bill should be passed and the accomplishment recognized.

The Chair: There are three minutes left for questioning, and I would start with Mrs. Witmer, please; one minute each.

Mrs. Witmer: Thank you very much for your presentation. I noticed here that in the summer of 2003, Leger Marketing took a look at the issue of union certification, and 85% of Ontarians believe a secret ballot vote should be required when forming or removing a union. Why do you think, then, we should not be responding to the will of those who believe it most accurately reflects an individual's freedom of choice?

Mr. Lyall: That's a good question, and it's a difficult one. In our experience, we can see the justification for maintaining a vote, and we can also see the justification for the card-based system. One thing we do know is that we operated under a regime where a card-based system was in place for many years, and it didn't seem to have a negative effect, at least in our industry, in our sector, which is what I'm familiar with. Certainly, the arguments with respect to labour mobility in construction and the fact that workers are here today and gone tomorrow—they move from site to site—provide additional constraints on the ability of union organizers to do what they do relative to other areas. I think that's what was contemplated originally when the card-based system was devised.

The Chair: Mr. Kormos?

Mr. Kormos: No, thank you.

The Chair: Ms. Wynne?

Ms. Wynne: Thank you very much and thanks for your support for the legislation. Some of the stories we hear about the voting process do concern me. I have a question for you. Have you got any suggestions about what could be done from the government's perspective in terms of tightening up the voting process? Are there changes that could be made that would make that a better process, in the cases where it's not?

Mr. Lyall: I can only comment personally. My experience shows that there are always ways of improving systems if one thinks creatively enough about it. I've heard comments that votes being held at workplaces are particularly intimidating to workers. So there might be something there that could be done to offset some of that intimidation.

The Chair: Thank you for your presentation. Thank you to all of you for participating.

We are going to resume meeting on Friday at 9 o'clock in Kitchener. Before we depart tonight, I believe there is some discussion about the Kitchener meeting.

Ms. Wynne: I understand there are some spaces free in our schedule in Kitchener, and I understand there are some requests to speak. I'd like to ask for the consent of the committee that we allow those people whose requests came after the deadline to speak, given that there are spots.

The Chair: If they wish to come to Kitchener.

Ms. Wynne: If they wish to come to Kitchener.

The Chair: That's a request. Is there any discussion on the suggestion?

Mr. Kormos: Perhaps Ms. Stokes can assist. I'm grateful for her work in getting this information out to us. At least a chunk of those people insist that they had presented their request in a timely fashion.

The Chair: Yes, six of them, I believe.

Mr. Kormos: That's quite frankly persuasive to me. Ms. Stokes didn't get them but they insist they did and there's no reason for them to not be truthful. Then that leaves three that weren't part of that package. If we have time, I'm agreeable to hearing them. I don't care what views they represent.

The Chair: Let me hear from Mr. Arnott, and then we'll go around again.

Mr. Arnott: I have in front of me the report of the subcommittee. The only question I have is, in doing so, would we be contravening what was agreed to by the subcommittee?

The Chair: Yes, there is no question on that, and that's why we are discussing it. My understanding is that the committee can make a decision, just like anything else, if there is enough support within the committee.

Ms. Wynne: Actually, I have written out a motion. I had thought if we could get agreement, I would go with that, but I have brought a motion and my understanding is we can change—

The Chair: I would like to hear the motion.

Ms. Wynne: Given that there are open spaces in the scheduled hearing on Bill 144 in Kitchener, Ontario, on Friday, April 29, 2005, I move that the committee accept the requests to speak received after the deadline, and that these deputations be scheduled within the agreed-upon day up to 4 p.m.

I apologize for the tortured syntax. That is my motion.

The Chair: Is there any discussion?

Mr. Kormos: I obviously support the motion. I had concern about the fact we were unable to use consent to achieve this end. Of course we have committee hearings, people are invited to attend them, and then when we've got open slots, to tell people too bad, so sad, they can't say what they want to say, I don't think is fair.

1800

Mrs. Witmer: It seems that at least the Liberals and the NDP have some idea as to who has made submissions. Nobody has contacted me, so I'd really appreciate knowing who has asked, who was late.

The Chair: It's my understanding we all got a list of the nine.

Mrs. Witmer: I don't have a list.

The Chair: Did you provide one to Mrs. Witmer?

The Clerk of the Committee (Ms. Anne Stokes): It was sent to your office.

The Chair: Can we provide one now? Ted, do you have a copy? Let's give a copy so you can look at it. The clerk did notify me earlier today that everyone got a copy. It's quite possible that sometimes there is—

Mr. Khalil Ramal (London-Fanshawe): Can you make sure they're not the same people coming under a

different name and a different umbrella presenting the same issue, or the reverse of that? Today was a lot.

Mr. Kormos: It happens from time to time.

The Chair: I think we can resolve this issue.

Mr. Arnott: I have another question, Mr. Chairman. We have the subcommittee report, which establishes the agreement that was made by the three parties. A lot of the groups that are interested in this bill can easily access a list of the committee members, so they might ask committee members, "Can I present?" in theory. Of course, you would say to them, "No, unfortunately the subcommittee has come to an agreement and the committee has ratified that agreement," and now we're changing the rules, literally in midstream.

The Chair: Let me try to clarify. I heard the arguments. I think I can summarize, if I may. The argument made is that six, seven or eight of them, the first group, did notify the clerk within the time and somehow the clerk is not aware of that notification. Therefore, there is that argument. There are three, I believe, in addition, who we know for sure submitted their names after the due date. I am also told by the clerk that it's up to the majority of the committee to make changes. Am I correct in that? Therefore, there is a motion on the floor that is legal and proper. Of course, you can make arguments as you please.

Ms. Wynne: I would like to make the point that, yes, the committee can, with a majority, make the decision that it chooses to make. Secondly, the reason I'm bringing this forward is that there is space within the allotted time that the subcommittee suggested for hearings and that we agreed upon. There is time available for these folks. So I'm not distinguishing between the people who said they got their request in on time and the people who didn't. I'm saying there's time in the agreed-upon hearing schedule and it seems to me that it makes sense. Whether those people are going to bring forward arguments we've heard before or not, this process exists so that people who have something to say have the opportunity to say it.

The Chair: I'll go back to the opposition.

Mr. Arnott: Not to belabour the point, but we now have the list and it appears that the government has lined up a number of unions that will speak in support of the bill. I'm sure the government is quite concerned about the number of unions that have come forward to speak against the bill, so they've made an extraordinary effort to line up some unions on Friday that may express support for the bill.

Mr. Flynn: Prior to the previous speaker, I didn't know who was on the list. All I know is that some people from the public have asked to address this. We have the space; we have the time. There's absolutely no reason in the world we shouldn't accommodate them. I don't know if these people are pro-bill, anti-bill or neutral.

The Chair: After Mrs. Witmer, I will ask for the vote.

Mrs. Witmer: I can probably help clear it up because the letter has come from Mr. Patrick Dillon. He has made a request that all of the following groups would be in a position where they could make representation. So I guess that tells you that somebody has lined up speakers on behalf of the bill. If we want to stack a day with people who are for the government bill, I guess that's fine, if that's who they are.

The Chair: I've heard all the arguments. I believe there is a request to take the vote. I will ask, those in favour of the motion? Those opposed? The motion carries.

I will ask that the clerk contact those people and ask them if they wish to come to Kitchener.

The Clerk of the Committee: Can I clarify one point? There are 10 people on the list and we actually would have eight spots, so if I could ask for a prioritized list.

The Chair: There might be two extra, depending if they wish.

Mr. Kormos: If I may, some of those groups may know each other well enough to be willing to share. I just suspect that.

The Chair: You may wish to present your list to the clerk.

The committee adjourned at 1805.

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Standing committee on social policy

Labour Relations Statute Law
Amendment Act, 2005

Comité permanent de la politique sociale

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Friday 29 April 2005

Vendredi 29 avril 2005

The committee met at 0908 at the Four Points Sheraton, Kitchener.

LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Projet de loi 144, Loi modifiant des lois concernant les relations de travail.

The Chair (Mr. Mario G. Racco): We are going to start now, if you can all have a seat, please. I want to welcome all of you to Kitchener. It is the riding of John Milloy, and he is here with us. Of course, Mrs. Witmer is from the next riding. But we know there are people here from all over Ontario, so we welcome all of you here to Kitchener.

ONTARIO FEDERATION OF LABOUR

The Chair: We're going to start our first deputation this morning. We are dealing with Bill 144, the Labour Relations Statute Law Amendment Act, 2005. It's our third day of hearings, the last of three days; the first two were in Toronto. Again, we welcome all of you to our meeting this morning.

The first one on the agenda—

Interruption.

The Chair: Sir, it's not on the agenda.

The first deputation is the Ontario Federation of Labour, Wayne Samuelson and Chris Schenk. Are you both here, gentlemen? You were in Toronto. I remember you.

Mr. Wayne Samuelson: Thank you. I remember you as well. Actually, I remember all of your committee. It's a pleasure to have a few minutes to talk to you about this legislation.

I should say right off the bat that I've had an opportunity that many people in the room haven't had, in that I've been able to listen to some of the presentations. As a result, while I am filing with you yet another brief on what we think labour law should look like in the province, I want to spend a few minutes talking about the issue in a broader context.

I find it interesting that as I sat and listened to the presentations, employer group after employer group sat here in this very chair, in this location at the table, to say how they were for democracy for workers and that they didn't think this legislation was good. Listen, my friends, if anybody in this room thinks that employers are ever going to show up at this table at any government committee and actually suggest that we introduce laws that make access to the fundamental right to join a union more fair, then trust me, you aren't living in the real world.

You shouldn't be at all surprised that employers show up here and try to make it harder for workers to join a union, to put in place barriers so they cannot exercise that right. I have an advantage that most of you don't have: I have worked at organizing. I've gone to workers' houses to talk to them about joining a union, and the reality is that once the employer gets hold of it, they intimidate them, they scare them, they threaten them. It's documented at the Ontario Labour Relations Board for many years.

The challenge for the Liberal government is to show that you're different from the Tories. When you ran for election, you said you were going to be different. You said to vote for change. Well, I'll tell you, if you bring in a law that enshrines in the Labour Relations Act provisions that have been in place—and I refer you to page 3 of my presentation—since 1950 and you don't have the guts to roll back the changes that the Tories brought in, then you're no different from the Tories. It's that simple.

Interruptions.

Mr. Samuelson: Shh. You're eating up my time.

The Chair: There is only 10 minutes.

Mr. Samuelson: We in the labour movement have lobbied hard. We have tried to convince the government and even the Tories—and the NDP, of course, which is a much easier challenge—that what you're doing is fundamentally unfair. You're not dealing with balancing a bunch of rights here, of balancing a bunch of interests. You might be, when you look at the Ontario Labour Relations Act around negotiating and collective agreements. But when it comes to organizing, what you're doing is ensuring that people have access to that right—access to the right. You're not balancing off the interests of Wal-Mart or any other employer and a group of workers. You're making sure they have access to the right. That takes a little bit of courage, because there are

employers out there who don't want unions—it's that simple—and they'll do anything to prevent it. You have a responsibility, I would argue, to make sure that workers have access to that right.

When we get up in the morning, most union people—most people—don't think about what it takes to certify a union. That isn't the first thing on their minds. But lots of people, mainly women and young people and new Canadians in the service sector, get up in the morning worrying about how they're going to pay their rent, whether they're going to have some dignity at work, whether their workplace is going to be safe. If you don't ensure that they have the right to come together collectively to protect their own interests, then shame on you. It's that simple.

Interruption.

Mr. Samuelson: You will hear lots of presentations from the labour movement, which I think will be very focused on the need for you to extend—I think it's a good thing that building trades workers have card-based certification; they should have it. But I also think every other worker should have it.

I want to leave a little bit of time in case there's any questions. But I just want to say to you, recognize where the comments from the employer community are coming from, and recognize the sincerity of workers who come to this committee asking you to ensure that everybody in this province has the fundamental right to join a union without the employer intimidating, harassing or paying them off.

Thank you very much.

The Chair: We have about three minutes left. We'll give one minute to each party. This morning, we start with Mr. Flynn. One minute each, please.

Mr. Kevin Daniel Flynn (Oakville): Thank you, Mr. Samuelson. I expected the presentation I heard and I appreciate the points you've made. You've made them before, and I think I understand them clearly.

My understanding is that you agree with all portions of the bill. The part that, obviously, you're asking us to extend is the right for a card-based certification outside of the building trades union as well. Should that not occur, is the bill supportable? Would you advise members of Parliament to support the bill without card-based certification extended to all unions?

Mr. Samuelson: I expected you to ask that question, because it's obviously the question you've been directed to ask. You've been asking it for the last week. So I have an answer. I think the Tories are going to vote against the bill, because they side with the employers; that's not rocket science.

Interruption.

Mr. Samuelson: I suspect—you're a politician; I'm just on the outside looking in—that the NDP caucus will vote against this bill, because it lacks fairness and justice for a whole whack of workers. At the end of the day—and Peter and Elizabeth know this—you could have passed this bill last fall if you wanted to. So don't try and

tell me that somehow it matters. The opposition is going to do what they think is right. I can tell you, if I was an MPP, I would not be voting for a bill that is so clearly discriminatory.

The Chair: Could I ask the public to please allow us to do our job. There is no need for applause or comments. Otherwise, we will just be wasting time, in my opinion.

Mrs. Witmer, please.

Mrs. Elizabeth Witmer (Kitchener-Waterloo): Welcome, Wayne. You've always been a very passionate advocate for the labour unions and the people, and I do admire and appreciate that.

My question to you is pretty simple: Why do you believe the government gave card-based certification to the construction unions and not to all unions in the province of Ontario?

Mr. Samuelson: I think the government lacks principles. I think they lack a commitment to ensuring that people have fundamental rights, and they took the easy way out. They're clearly influenced by Wal-Mart and those kinds of employers, as your government was. Rather than stand up for what's right, they took the easy way out and provided card-based certification for—what?—4% of the workforce? They just don't have the commitment to principles, a commitment to change, frankly. As a result, they took the easy way out and thought they could do this without upsetting the labour movement. Let me assure you, that is not going to happen.

The Chair: Mr. Kormos, please.

Mr. Peter Kormos (Niagara Centre): Thank you, Brother. I want to use your comments to say this, because you've provoked it on my part. I've gotten to know these four Liberal members over the course of the last year and a half. They are among the more capable and more committed members of their caucus. Make no mistake about it. None of them is dishonourable. I see them as young, new members of the Legislature in a position to make committee hearings work once again, to have listened to the public, to have listened to interested parties, to understand that if a building and construction worker's signature is valid in terms of indicating whether he or she wants to belong to a union, then surely any other worker's signature is as valid—

Interruption.

Mr. Kormos: So I call upon these people, because they are among the leaders in their caucus, to take that message back to their Premier and to use their power on this committee to support an amendment that would include all workers in the card-based certification. It's their power. They can do it.

The Chair: Thank you. The next presentation is—

Mr. Samuelson: I'm going to respond quickly.

The Chair: Thank you for your presentation.

Mr. Samuelson: You're not going to let me respond? Mr. Kormos talked away all my time.

The Chair: Sir, please. Allow us to do our job, please.

COALITION OF CONCERNED CONSTRUCTION EMPLOYERS

The Chair: The next presentation is the Coalition of Concerned Construction Employers, Stephen Bernardo. Is Mr. Bernardo here?

Interruption.

The Chair: Sir, I would ask that you please allow us to do our job. There's no need for you to call anyone.

Interruption.

The Chair: Please proceed, sir.

Mr. Stephen Bernardo: Thank you, Mr. Chair, and ladies and gentlemen of the committee. We appreciate this opportunity to appear before the committee. My name is Stephen Bernardo, and with me are Denis Bigioni and Allan West. I'm counsel to and Mr. Bigioni is president of the Coalition of Concerned Construction Employers. Mr Bigioni is also the president of Dagmar Construction Ltd. Mr. West is treasurer of the coalition and vice-president of K.J. Beamish Construction Ltd. Both companies have over 50 years' history in Toronto.

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The coalition is an organization of companies that perform road-building, bridge-building and sewer and water main construction extensively throughout the province. We comprise over 50 companies, employing 7,500 workers, and are responsible for over \$1 billion of infrastructure work in the province annually. We are one of only two voices that we understand will be speaking to you as the voice of the non-union contractor in Ontario.

The coalition was formed as a result of member companies concerned about one particular element in Bill 144, where the government is seeking to impose special rules for certification on the construction industry. We will not speak for or against any other part of the bill. This proposed amendment would take away the rights of our employees to have a secret ballot vote conducted by the Ontario Labour Relations Board when a trade union applies for certification to represent them. The amendment discriminates against and marginalizes our employees. Employees in all other sectors of the economy retain the right to a secret ballot vote. Only construction workers are marginalized in this way.

The government has sought to justify this amendment by stating that employment patterns in the construction industry are of short duration and are transient. We wish to point out to you that this is not the case in our industry. Our jobs are typically six to 12 months in duration; our companies recall their employees at the start of each construction season, and they remain employed until the end of the season; and further, we rehire 90% of our workers from one season to the next. Truly, road-building, sewer and water main and heavy engineering contractors are not the type of employers targeted by this legislation.

If the amendment becomes law, you will have an anomalous and unfair situation where a 20-year employee of one of our companies working on a construction project all summer would not have a secret ballot vote in an application for certification, but an employee

who had been employed in a grocery store 30 metres away for two days would have such a vote.

In a card-based system, cards are valid for six months for the purpose of automatic certification, and even that process is open to manipulation, because cards can be collected undated and dated later at the time an application is made or filed, thereby making them effective in perpetuity. There is no evidence or information provided as to the circumstances under which membership documents were obtained or witness statements attesting to the fact that a witness knew the signee. There is no opportunity for the company or their representative to examine the cards. As well, there is no scrutiny by the labour board into the circumstances of signing and whether the cards are actually signed by the person indicated. Often, cards are collected by employees or mailed to trade unions. It is possible to have trickery, misrepresentation, forgery or coercion because it is all done in secret, and there will be no secret ballot vote which will allow construction employees to express their true feelings in a democratic way.

Interruption.

The Chair: Just go ahead.

Mr. Bernardo: If rhetoric is going to interrupt dialogue, then that's unfortunate.

Interruption.

The Chair: Excuse me. The gentleman has the right to speak, just like anybody else in this room. Would you please allow him to speak so we can move on with our meeting?

Mr. Bernardo: I'm going to put this in a different perspective. Imagine if your political opponent in a provincial election was permitted to come to a polling station on election day, drop 1,000 membership forms for his party on the table of the returning officer and say, "I want these membership documents recorded as votes for me because they indicate that these people support my party." You would undoubtedly recoil in wonder and anger and shout, "It is not fair. It's totally against the democratic process," and you would be completely correct. If the election were to be determined in this way, you would feel that the process and result were manifestly unfair. Our employees who did not want a trade union and our companies would, like you, feel that the process was unfair and did not represent the true wishes of the employees. Certification under such circumstances would more likely lead to subsequent difficulties between the parties.

A significant percentage of the workforce in the construction industry is made up of new Canadians and landed immigrants. Such a system would marginalize these people.

I want to talk to you a little bit about the nature of the construction industry already. If implemented, this element of Bill 144 will add to the unfairness of a system that already fails to recognize the employment rights of a long-term employee who may be absent on the day the union applies for certification. The labour board has, for many years, interpreted the act in such a way that

requires construction employees to be actively at work on the day the application for certification is filed by a trade union.

Therefore, using our previous example, if our employee who has 20 years of service with the company and who has worked every day during a current construction season is sick on a Friday or takes his child to a doctor on a Friday and an application for certification is filed on that Friday, this 20-year employee is not allowed to vote on this fundamental issue that will totally affect his employment. He's not allowed to vote. Miss one day on the day of application and you're toast. It's like you don't exist. That's the situation right now in the construction industry. Obviously this system gives unions an advantage, as they determine when an application is filed and, therefore, which employees will count.

It is the position of the coalition that, in the interest of democracy, Bill 144 must be amended to prevent the further marginalization of construction employees. To do otherwise would be a failure of democracy. A democratic vote cannot be considered a barrier to anything. Some have said that—

Interruption.

The Chair: Please, sir. Excuse me.

Mr. Flynn: Mario, why don't you call an adjournment for five minutes? We can't go on like this. This man has the right to make a presentation.

The Chair: I believe that the gentleman has less than a minute. Can I just continue and then we'll make a decision. Would you please continue for about a minute.

Mr. Bernardo: I'm turning it over to my friend Mr. Bigioni now, and I believe we should have more than a minute.

The Chair: Sir, you have about a minute.

Mr. Denis Bigioni: Thank you, Mr. Chair, ladies and gentlemen. As Steve said, I'm the president of Dagmar, a company with over 50 years of history, and I'm the third-generation president and also the president of our coalition.

Essentially, the rationale behind the justification for applying the card-based system to construction is flawed as it relates to road building, sewer and water main and heavy civil construction companies, as in the coalition.

As Steve has pointed out, there's already special recognition for construction. Further, the types of jobs we do are not short-term in duration, as the minister stated on the record. Our jobs are typically six to 12 months' duration. Finally, the minister stated that workforces expand and contract with great rapidity.

In our industry, these factors do not apply. We have over 90% rehire. It's detrimental to us to not rehire. Thus, we try hard to maintain a stable workforce.

What we would ask is that this portion of Bill 144 be revoked. If not, then we feel that it would be appropriate to allow time for the other significant changes to be addressed and considered before applying such a card-based system in this industry.

Finally, for the reasons stated, our industry is special and unique, and is not the target for the construction

sector that I think the government has in mind. We ask that there be an exemption for road building, sewer and water mains and heavy civil constructors.

The Chair: I thank you for your presentation.

0930

LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, CENTRAL AND EASTERN CANADA REGION

The Chair: We will move on to the next presentation, the Labourer's International Union of North America. Before they start speaking, could I ask everyone to please allow us to do our job. If you do intervene from the back or from this side, you're not going to allow the people to make their presentations properly and we are all going to lose. So there's no benefit for anyone. Would you please keep that in mind? I thank you for that.

LIUNA, please.

Ms. Carolyn Hart: Good morning. I'm here today on behalf of the Labourers' International Union of North America, a construction trade union. I'm actually replacing Mr. Daniel Randazzo, who is ill and unable to attend today. He sends his regards to the committee.

The first aspects of Bill 144 that I want to address are the remedial certification and interim relief provisions. These are two remedial provisions that go hand in hand, and both of them are essential to restoring fairness to the certification process.

As an in-house union lawyer, I've had considerable first-hand experience dealing with workers who have either been discharged or threatened with discharge during the course of an organizing drive. I know from experience that it's not uncommon for employers to fire people they know to be union supporters or to threaten to close down if they are unionized. I also know from experience what a devastating effect firings and threats have on workers seeking union representation.

When employers react to an organizing drive by threatening and/or implementing discharges, it is virtually impossible to reassure workers that they can continue to support a union without fear of reprisal. But you don't have to take my word for that. You can look at the decisions of the Ontario Labour Relations Board, and there are a lot of them that deal with allegations that employers have intimidated workers.

The board has said over and over again that when workers have been threatened with dismissal for supporting a union, they invariably conclude that voting for union representation means voting themselves out of a job, and because they need their jobs, they don't vote in favour of union representation once they've been threatened, even if that is really what they want.

The board refers to this phenomenon as a "chilling effect." The Labour Relations Act in its current form does not contain an adequate remedy for that chilling effect. The best remedy currently available to the board is an order for a second vote, and if that was an effective

remedy, you would expect the success rate on second votes to mirror that for regular votes, but it does not.

Since 1998, when remedial certification was taken out of the act altogether, there have been, I'm told by the chair of the Labour Relations Board, only six occasions when a union has managed to win a second vote. That's a testament to the powerful effect of threats to job security. The board can chastise employers for making threats and require them to post notices in the workplace reassuring workers that they have a right to choose union representation, but that has very little real impact. It's almost impossible to hold a free and fair election in the workplace once people have been intimidated, and there's absolutely no parallel with such an election to provincial elections. For that reason, the board needs to have certification at its disposal as a remedy for the most serious unfair labour practices.

The board has used this remedy sparingly and responsibly in the past and it's to be expected that they will use it sparingly in the future, reserving it for only the most egregious cases of employer misconduct. The wording of section 11 of the bill virtually guarantees this by stating that remedial certification shall only be imposed if "no other remedy would be sufficient."

I said it was almost impossible to hold a free and fair election once workers have been intimidated. In my experience, there is one remedy that may make workers comfortable enough to express their true wishes about a union after being intimidated, and that is interim reinstatement.

If workers see union supporters reinstated to their positions quickly, that can give them enough confidence to continue to support an organizing drive. That does not occur under the current system because unfair labour practice complaints take a significant amount of time to litigate, and with the board's heavy caseload, it's rare for such cases to be completed in less than three months. Often they can take six months or more. Seeing people reinstated after a prolonged delay just doesn't have the same effect. A discharge is a very traumatic experience and getting one's job back months later does not make up for all the stress and financial hardship that people undergo.

As the act stands now, the punishment does not fit the crime and many employers—I know every employer that's come before you says it's not them, but many employers deliberately violate the act by firing union supporters because they consider the lawyers' fees and back wages a relatively small price to pay for keeping a union out of the workplace.

The board needs the ability to reinstate workers on an interim basis during organizing drives in order to remedy and counter that chilling effect. If you look at the board's case law prior to 1995, you will see that when the board had this power it was used responsibly. The board was careful to balance the effect on employers against the effect on unions and on workers. The board only granted interim reinstatement when the union's pleadings made out an arguable case and only if it was convinced that

reinstatement would do more good than harm. Bill 144 adopts a similar balance-of-harm test. In fact, I think the test under Bill 144 is slightly stricter in that it refers to the need to prevent "irreparable harm."

Another important point that needs to be made is that, apart from being a good and fair remedy, it's also a significant deterrent to employers to committing unfair labour practices. Employers will be much less likely to threaten and intimidate their workers knowing that they can be forced to take a union supporter back or that they can have certification imposed on them.

I have to say that I understand the positions of people here who want card-based certification extended to all workers. We don't disagree with that; it would be ideal. But I believe it's a large step forward to bring it to the construction industry and I'm frankly shocked that any labour organization could appear before you and tell you not to support this bill simply because it doesn't go to that extent. Those remedial certification and interim relief provisions are critical to everybody, and they're available to everybody under this act. Those remedies are not restricted to the construction industry. They will be a huge benefit to all unions and all workers who want access to union representation, and for that reason we commend you on the bill.

If I have some time, I'll talk briefly about card-based certification. This was in place for almost 50 years, from 1948 to 1995, under Conservative, Liberal and NDP governments. It's tried, tested and true. I would point out that the last presentation you heard ignores the fact that the OLRB has an extensive body of case law aimed at ensuring that membership cards used in certification applications constitute a fair and accurate representation of employee wishes. There's a whole body of jurisprudence there that the board can return to in order to make sure that this system works, that there is no misconduct in connection with the cards and that it works fairly.

Card-based certification is particularly appropriate for the construction industry because of the mobile and transitory nature of construction work. I heard my friends previously say that they have a very stable workforce, that they bring back all their workers, but the fact of life in the construction industry is that it's very easy to introduce layoffs. Construction schedules wax and wane. It's not hard to impose a layoff when you want a layoff. And there is a lot of turnover; that's a fact of life.

Is that all my time?

The Chair: Thank you very much for your presentation.

UNITED STEELWORKERS OF AMERICA, DISTRICT 6

The Chair: We'll move on to the next presentation, the United Steelworkers of America, District 6: Marie Kelly, please. Good morning.

Ms. Marie Kelly: Good morning. My name is Marie Kelly. I'm the assistant director for the Steelworkers in

Ontario. We met a couple of days ago. I'm back for the second part of our presentation, if there are any questions. When I did my presentation, I'm sure everyone was disappointed not to have an opportunity to question me.

I have with me Charlie Campbell, the head of our research department, who has some submissions.

0940

Mr. Charles Campbell: I have a somewhat longer written submission, but I expect to make some brief, focused oral comments, as Marie said, to allow some time for dialogue.

Specifically, I wanted to address some misconceptions that may exist about the likely economic impacts in Ontario of the changes to the organizing regime that we think would be fair and appropriate. Some of you may have been told that extending card-based certification to all eligible Ontario workers—not just those in one sector—could cause significant economic dislocation that the province can't risk. The argument goes like this: If employees could form a union simply by getting support from 55% of their co-workers, investment and jobs would flow out of Ontario to other jurisdictions where employers would still have the ability to wage anti-union campaigns during certification votes to intimidate the workers, fire union sympathizers, spread fear and, in general, carry on business as usual.

I want to take just a couple of minutes here to look at the evidence and perhaps allay whatever concerns there might be about the economic impact. Research does consistently show that unionization increases wages by a certain modest amount. In Canada, there is sophisticated research suggesting that it would be about 7% or 8%. It shows that this has a greater effect for wages on part-time and precarious work in those comparatively few cases when workers in those circumstances are able to overcome the obstacles and join a union.

The benefits are by no means limited to increased wages. In fact, union members in Canada are three times more likely to be covered by employer-sponsored pension plans than non-union workers and twice as likely to be covered by medical or dental plans. It's worth noting that those who do not have these benefits are more likely to put pressure on public resources for these things.

It's reasonable to say that with more balance restored to the rules, we could see an increase in the number and proportion of workers covered by union contracts and a real increase in their wages and benefits. This could well trigger a small decline in the proportion of GDP made up of corporate profits and a corresponding increase in the proportion made up of wages.

Would this lead to dislocation? Consider this: In 2004, corporate profits increased to almost 14% of GDP, which is the highest on record in Canada, whereas—and this isn't a coincidence—the proportion of GDP made up of wages, salaries and supplemental income has declined now to the lowest level on record. If a change to the labour law regime led to a return to the relative balance that we had in the late 1990s, that shouldn't be a disaster.

To go to the main question: Would a system of card certification be a disaster for the province of Ontario? For most public policy questions, the answer to these kinds of things is something of a leap in the dark, but in this case we have an actual historical record. For a 45-year period, Ontario operated under such a system under Conservative, Liberal and New Democratic governments. From 1950 to 1995, the province's GDP, adjusted for inflation, multiplied more than four and a half times, increasing by an average annual rate of 3.9%. That was significantly higher than the rate of increase for that same period of time across the border in the United States, where they operated under the other system.

Since the labour law changes of 1995, Ontario's GDP growth has been slower. There were some good years, some bad years and an ultimate balance of about 3.4%. We're not saying that the change to labour laws caused the slower growth, but we believe there's no evidence to reject a sound, tested, responsible, balanced approach to labour certification in Ontario on the basis of unfounded speculation about the possible economic impacts.

Thanks for your time.

The Chair: We've got four and a half minutes—one and a half minutes each. Mrs. Witmer, you're first.

Mrs. Witmer: Thank you very much for your presentation. It's good to see you. I'm going to ask you the same question. Why don't you think you got the card-based certification?

Ms. Kelly: I'll take that one, Mrs. Witmer. I think it's quite clear that this government understands that in order to ensure people have a right in an act and have the ability to actually enforce that right, the only way to do that is through auto-certification. We have a history of that in this province. We all know that if you really want to give people the rights that are set forth in the Labour Relations Act, the only way to do that is auto-certification. So this government has decided that, where they have friends and where friends have donated and fund-raised for them, they're going to protect their friends, and they've given it to the construction unions. What they failed to do is give it to all workers because all workers have not funded the Liberal Party.

We're here to tell the standing committee that we will hold them accountable. We will hold this government accountable, we will hold each of the individual MPPs in their constituencies accountable when this law is brought in. If they vote for a law that's discriminatory, that's sexist, that's racist, that's against workers in this province. We will hold them individually accountable. It's time for them to stand up—individually, they ran in their ridings—and be accountable on this.

The Chair: Mr. Kormos, you're next, please.

Mr. Kormos: I used to be—I suppose I still am—a lawyer. I used to practise criminal law, which is probably highly appropriate for entering politics, especially in view of what's been happening in Ottawa. But you know, it strikes me as strange. I understand the building trades' enthusiasm about the bill. Of course, they would be damned fools to reject the bill. But to commend the gov-

ernment for it is like acting for three accused who have been framed on the most outrageous, trumped-up charges, and then being grateful to the judge because he only convicted two of them.

I understand the building trades' enthusiasm and we support the building trades' enthusiasm about the bill, but damn it, don't turn your backs on your sisters and brothers. It's one thing to say, "Yes, pass the bill." It's another thing to say, "We stand together in solidarity with our sisters and brothers, because just as we welcome card-based certification, damn it, we're prepared to fight like the devil to ensure that every other worker in this province gets card-based certification.

Ms. Kelly: Just in response to that, as a woman, I've lived 41 years in this province, and during my lifetime no one has ever said to me, as a woman, that my signature does not amount to the same as a man's signature on any document. I've read the history books. I understand the history of when there were women before me who had to have their husbands or their fathers sign on a document because their signature meant nothing. I will demand, and women of this province will demand, that we not go back and regress to the days when my signature didn't mean the same as that of any man in this province. I demand equal rights.

The Chair: Thank you. Mr. Flynn.

Mr. Flynn: I really enjoyed your presentation. I thought it was very measured. You were talking about how there could be a relation between unionization and economic health. If you look over the past 40 years, I think your point was that it was good for the economy, or it was at least neutral.

Mr. Campbell: All the evidence is that it was, on balance, good for the economy.

Mr. Flynn: Do you want to elaborate on that? The economy has changed during that period of time. Are there any up-to-date data that all members of this committee could avail themselves of that maybe look at the past decade?

Mr. Campbell: I'll try to gather some and point you to it.

The Chair: Thank you very much.

Ms. Kelly: I want to respond.

The Chair: The time to respond is over. It's 10 minutes for each group, you know, otherwise—

Ms. Kelly: Are you telling me you're going to cut me off when the Steelworkers have been asked a question—

The Chair: Please, the next presentation is the International Brotherhood of Electrical Workers.

Ms. Kelly:—and we have not finished the question. You'll cut us off. That's the kind of open hearings you're going to have in this room?

The Chair: Would you please allow us to—

Ms. Kelly: We've been asked a question and we want to answer that question. Are you denying us the right to answer that question fully?

The Chair: The time is over. Thank you.

Mr. Kormos: Chair, please, unanimous consent.

The Chair: Do I have unanimous consent, yes or no? Yes? Go ahead, please.

Ms. Kelly: We all know that having unions in this province, in this country, is beneficial. They have different laws in the US regarding unionization, and we know that during that period there have been companies that have come to Canada and which in Canada have been able to grow and survive. We also know that during this past period we signed NAFTA and a bunch of labour agreements that have put Canadian workers in competition with workers in other countries, competition that's unfair and that we cannot compete with.

We cannot compete with 25 cents or a dollar an hour with workers who are in Mexico or in China. Companies are moving away from Canada to go to those countries because of the economic realities of globalization. What's good for Canada and what's good for this province is having people who make a decent wage. I believe in the trickle-down theory when the trickle-down theory works, but when the tap is shut off, then there is no trickle down. A good economy has well-paid workers who are able to then put their money into the economy with their purchase power. I don't believe that providing unionized workplaces is a detriment to this economy. Quite frankly, if your government believes the problem is unionization, have the courage of your conviction, because you're putting in a piece of legislation that says, "We believe the people have a right to unionize but we're going to underhandedly not allow them to do so." If you believe unionization is a problem, stand up on your conviction and maybe listen to the people of this province more than you're listening to me right now.

0950

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

CONSTRUCTION COUNCIL OF ONTARIO

The Chair: Can we move on to the International Brotherhood of Electrical Workers. Brett McKenzie, please.

Mr. Brett McKenzie: Mr. Chairman, fellow panelists, thank you for the opportunity to come here today and speak before you on Bill 144. My name is Brett McKenzie. I'm a member of the International Brotherhood of Electrical Workers. I, like Brother Samuelson, have had the opportunity to organize in this province. I was an organizer for six and a half years. I have seen the changes. I began organizing in a period when we had card-based certification, and when things changed.

Once again, to reiterate, I'm here to endorse the proposed changes to the current Labour Relations Act. The overview shows us that the Conservative government amended the act seven times during their reign of terror, in which the rights of workers were diminished. Each change which that government brought in stripped away the rights of employees and transferred the power to the employers. Since 1950 in this province, we've had card-

based certification. In 1995, the Tories changed that. As an organizer, that created mass confusion. Card-based certification minimizes employer interference.

We've heard from employers here today how they care about their workers, how their workers are important to them, how they should get a vote. Being an organizer, it's difficult enough to get somebody to sign a card for organizing. Why should individuals in this province have to sign a card for organizing and then conduct a vote after that?

The vote procedure in this province gives the employer five days to intimidate, to coerce, to threaten and to punish their employees. There's no doubt about it. Anybody who's been an organizer will tell you that. The employers don't care about their workers, the majority of them. All they care about is profits. It's capitalism, it's pure greed, it's profits.

What we need in this province is card-based certification, allowing employees to exercise their rights, minimizing the impact of employers and the intimidation that goes on. As an organizer, I can give you numerous examples of employer interference. We've seen it all. At a company called Sure Electric, an application was filed by the IBEW. Four of the six individuals signed cards. The vote was held and the vote was 5-1 in favour of the employer. Do you think there was any intimidation there? Do you think there was any coercion there? Possibly, but then again, the employer cares about these people. He cares about the fact that they don't have benefits. He cares about the fact that they work for a substandard wage. He cares about the fact that he pays for the underground economy.

Through employer interference, numerous votes go awry for the unions. There are numerous glitches with the current system. There are numerous delays with the current system. We've had applications through the vote procedure that have been tied up at the Ontario Labour Relations Board since June of last year. Do you think that's fair, that the workers in this province who sign authorization cards for organizing have to conduct the vote and they're waiting 12 months to find out whether or not they can be a unionized worker? I think that's a shame.

I've been involved in many organizing drives in my years. I've seen the joy in the faces of the workers. I've seen the joy in the faces of their families. They're able to enjoy better wages, better benefits and, above and beyond all, better safety conditions. They work in a safe and efficient manner. On the flip side, I've seen the devastation on people's faces. I've seen it when they lose an organizing drive, when they're fired, when there is no interim relief. I've seen it all, and it's not easy. It's not easy being an organizer in this province and it's not easy making change, but now it's time for the change and I'm here to support Bill 144. I thank you for your time.

The Chair: Thank you. We have about four minutes, one minute each. Can I start with Mrs. Witmer, please.

Mrs. Witmer: Thank you very much for your presentation, Mr. McKenzie. Do you support this being extended to all of the unions in Ontario?

Mr. McKenzie: Yes.

Mrs. Witmer: Is your organization fighting on behalf of that?

Mr. McKenzie: I think we're trying to work hand in hand with the OFL and the other organizations.

Mr. Kormos: Thank you, Brother. Look, I couldn't agree with you more; what we need in this province is card-based certification. I understand that there are people who disagree. Mrs. Witmer has been consistent and clear as labour critic for her party in that regard, and I respect that. I have regard for that. One understands where she's coming from, and she has an argument to make, one that I fundamentally and profoundly disagree with. But I'm harder-pressed to comprehend the sucking and blowing of a party that says that card-based certification is a legitimate way of determining wanting to join a labour union for some workers but not for other workers.

The building trades would be damned fools not to want the government to pass this bill, because there's a lot at stake. Quite frankly, I expect to see all hell break loose in that industry once this bill passes. I want to see 20,000 new union members in the construction and building trades.

But I want folks to understand very clearly that I, as a New Democrat, will not attach my name to legislation that excludes the vast majority of workers from card-based certification, because if the roles were reversed, if it was the building trades that were being excluded from card-based certification, I would expect the building trades—notwithstanding that they're a smaller number of workers in this province—to expect me to stand up for them and not attach my name to a bill that excluded the building trades from card-based certification. I'd like to think I'd be prepared to do that. I think my history suggests that I would.

Ms. Kathleen O. Wynne (Don Valley West): Thank you, Mr. McKenzie, for being here. I have two questions. First of all, I'm assuming that you support the remedial certification, the issue of decertification posters and the interim reinstatement.

Mr. McKenzie: Yes.

Ms. Wynne: Those are good things?

Mr. McKenzie: Interim relief is a major thing. When you deal with organizing and you see a worker who's been laid off—in our opinion, fired—for organizing activities, which a sister talked about before with chilling effect, you need something to get those people back to work. We're dealing with individuals here. We're dealing with families. We're dealing with lives. When somebody gets fired for an organizing activity and they cannot get a job, these people still have payments. They still have mortgages and car payments. They have children and families. They're part of our communities.

Ms. Wynne: I completely agree with you, and I think it's a really important thing for us to do.

Just very quickly, one of my concerns is the intimidation that people keep raising. Can you help me—and maybe you can send us something later if you think about

this. What could we do to improve the way the votes take place and, at the same time, to improve the way the card certification process happens? How do we get intimidation out of there?

Mr. McKenzie: Make everyone in the province a union.

Ms. Wynne: But that's people's choice, right?

The Chair: Thanks for your presentation.

GREATER KITCHENER-WATERLOO
CHAMBER OF COMMERCE
ONTARIO CHAMBER OF COMMERCE

The Chair: We'll move to the next presentation, the Greater Kitchener-Waterloo Chamber of Commerce, Veronica Kenny, chair. Good morning again. You have 10 minutes total for your presentation. If there's any time left, we will allow questions. Start any time you're ready, please.

Ms. Veronica Kenny: Good morning. My name is Veronica Kenny. I'm here with my colleague Jo Taylor to make submissions on behalf of the Greater Kitchener-Waterloo Chamber of Commerce. Copies of our written submissions are currently being distributed to everyone. Due to a scheduling conflict, the Ontario Chamber of Commerce has not been able to make oral submissions in this matter so they've asked that we also speak on their behalf. Copies of their written submissions are also being distributed before you.

A healthy labour relations environment is critical for a strong Ontario. The ability to express one's opinion and exercise the right to vote is key to healthy labour relations in this province. This bill removes those rights and amounts to unnecessary tinkering with the existing labour relations regime. It's detrimental to both employees and employers, and essentially it's fundamentally undemocratic.

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First off, looking at the automatic certification provisions of the act, the proposed amendments to section 11 would permit the labour board to automatically certify an employer if an unfair labour practice is committed in the context of a union organizing drive. This is unfair to employees in that it robs them of their opportunity to voice their opinion through a democratic vote. It opens the door to a possible outcome like that which occurred in the Wal-Mart decision, where employees could become unionized despite the fact that a majority did not wish to be so.

Interruption.

Ms. Kenny: These provisions are unfair to employers in that automatic certification is a penal and—

The Chair: Excuse me, may I ask the gentlemen at the back to allow any one who has the floor to speak. There's no need for intervention by someone else. Please continue.

Ms. Kenny: These provisions are unfair to employers in that these proposed amendments are penal and not remedial in nature.

The act as currently written gives the labour board a broad jurisdiction to remedy any unfair labour practices that occur during a union organizing campaign. The board can undo any chilling effect that is caused by an employer's unfair labour practice by reinstating wrongfully terminated employees, posting board notices or reimbursing wasted organizing costs. The board has broad jurisdiction to do a number of things to undo any harm that is caused by any alleged undue influence by an employer. Once these remedies have been ordered and any chilling effect that has occurred on employees affected by an unfair labour practice has been reversed, then the employees' true wishes can be determined by a democratic vote. Automatic certification or penalty certification is not necessary to right these wrongs.

Further, automatic certification would unfairly impede an employer's right to free speech during an organizing campaign by promoting silence for fear of going too far and becoming automatically certified. This is detrimental to employees in that they may lose out on hearing their employer's opinion on the matter and would only get one side of the story during a campaign.

With respect to card-based certification in the construction industry, this is detrimental in that it also robs employees of their democratic right to vote. Employees opposed to an organizing campaign would have no way of expressing their opinion. Union cards during an organizing campaign are often solicited in secret, without the knowledge of known company supporters. With a card-based certification system, employers could become unionized without being aware that they were in the midst of an organizing campaign. They would not be given a chance to express their opinion and fight for their businesses before the deed was done. This is extremely dangerous in the ICI sector of the construction industry, given that these businesses become automatically bound to a collective agreement upon certification.

The practical fact is that card-based certification in the construction industry can actually be fatal to many small employers who could not compete if they became automatically certified and automatically bound to an ICI collective agreement. Automatically becoming bound to a collective agreement is fatal to these employers, because as soon as they become bound to a collective agreement, these collective agreements often contain wage provisions that are significantly higher than what employers are currently paying their employees. This sudden obligation to automatically pay these employees these increased rates often results in bankruptcy and the end of small construction companies.

Further, question the rationale as to why card-based certification is only being put forth for the construction industry and not for other sectors in this province. Provincial bargaining in the ICI sector does not allow employees and employers to bargain their own collective agreement. Certification in this industry has a more significant impact than in other industries. As such, if anything, this industry needs the protection of more, not less, democratic rights.

With respect to provisions regarding the decertification posters, again, this is undemocratic in that it prevents employees from obtaining valuable information. Depriving people of information about their legal rights is always harmful and never helpful.

Both the Greater Kitchener-Waterloo Chamber of Commerce and the Ontario Chamber of Commerce are concerned that this bill will have a serious chilling effect on our provincial economy. The loss of both employer and employee democratic rights creates an inhospitable business environment in our province. The loss of free speech and the loss of the right to express one's opinion through a vote stifles creativity and flexibility. Rather than opening the door and welcoming investment and business to our province, this bill will turn business away. In short, we're concerned that this bill is bad. It's bad for everyone: businesses, employees and employers.

Thank you. I'd welcome your questions.

The Chair: Thank you. There are about three minutes. We'll have one question each.

Mr. Kormos: Folks, thank you very much. I do appreciate your being here. I come from down in Niagara: Welland. It's a union town. I grew up there, and I knew where the Labour Temple was before I knew where the church was.

Look, you've got to understand that our town used to be very prosperous; it's in a decline now. But its prosperity developed when we had a whole lot of unionized jobs, with a high-wage economy and benefits and pensions. Small business was just flourishing and people were selling cars and vacations and furniture. All hell has broken loose now that we've lost those heavy industries because of electricity prices, among other things, and all we've got are low-wage, non-union jobs. Small business is collapsing all around us.

I hear what you're saying, but it doesn't tune in with my reality. Down where I come from, are we different from other parts of the world? The prosperity of the community was dependent upon a whole lot of union jobs and union workers making good money. They spent it at all those small businesses. Small business is going belly-up. We've got no union jobs.

The Chair: Thank you, Mr. Kormos. Mr. Flynn?

Mr. Flynn: Thank you, Ms. Kenny. I appreciated your presentation. Just so I'm clear, what you seemed to be saying was that you prefer the status quo, that the changes the previous government made to labour legislation are changes that you would support and you would not support the changes being put forward by this government?

Ms. Kenny: These changes are unnecessary and improper.

The Chair: Ms. Witmer?

Mrs. Witmer: Thank you very much, Ms. Kenny, for your presentation. I appreciate your courage in stepping forward this morning to make that presentation.

I do share one concern you've expressed, which I will paraphrase. In the global economy of today, I am concerned, because I have heard from individuals who were

planning investment or expansion in this province that this legislation will cause them to reconsider or perhaps make their investment in another state or another country. That's my concern, because at the end of the day, it means no jobs for the people in this province, and that's what concerns me today. The environment today is different than it was 10, 15, 20 years ago. I've had three situations brought to my attention. Are you aware of anyone who is postponing or reconsidering a decision to expand their business or maybe open up an operation?

Ms. Kenny: I can't make any comment with respect to any definite decisions that have been made, but I have heard the same concerns addressed by employers who were considering expansion in this province.

The Chair: Thank you very much for your presentation.

ONTARIO PIPE TRADES COUNCIL

The Chair: We'll move on to the plumbers and steamfitters.

I want to say thank you to those people listening. This presentation went without interruption, I believe. I thank you again.

Interjection.

The Chair: I'm sorry; there was one. It was an improvement. I guess that's what I should say.

Mr. Mark Ellerker: Mr. Chairman, standing committee members, my name is Mark Ellerker. I appreciate the opportunity to address this committee, as the issues affect my chosen trade, my fellow unionized skilled trades workers and those workers who do not belong to a trade union.

I have been a licensed steamfitter since 1999, after serving a five-year apprenticeship contract. I have been a member of Local 67 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada—UA—Hamilton, since 1994.

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The Ontario Pipe Trades Council, OPTC, created a provincial organizing division in 1993. I became employed as an organizer for the OPTC in 2004.

The UA represents workers in all aspects of the construction industry: in the industrial, commercial and institutional, residential, electrical power systems and pipeline sectors in construction, and in fabrication and manufacturing outside the construction industry as well.

The OPTC is a provincial labour council that promotes and represents the piping industry in Ontario. The OPTC represents over 15,000 men and women in the province of Ontario. Today, I am here representing those persons and the unions to which they belong.

The provisions in Bill 144 are viewed by the OPTC as a positive step whereby non-represented workers may be more freely able to express their true desire for representation. However, the proposed legislative changes remain problematic and incomplete, especially for com-

pulsory certified trades such as plumbing, steamfitting and electricians.

As an organizer, I find that filing applications for certification can often lead to a negative reaction by employers and, in some cases, by employees. Under the present legislation, since the repeal of the remedial certification provisions in 1998, there have been no meaningful penalties attached to the commission of an unfair labour practice that would truly discourage an employer from engaging in such misconduct. As such, many certification applications are routinely followed by an unfair labour practice complaint, with the net result being lengthy litigation and frustration of the employees' desire for representation. The proposed return of the remedial certification provisions are a good first step to restoring the effectiveness of the labour relations system. However, as the rest of our brief makes clear, many other steps are still needed to fully restore the balance in labour relations in this province.

In light of the tragedy of health problems and deaths encountered in Walkerton, one would expect that everyone would embrace the concept that anyone employed to install potable water systems for large or small populations should be required to be certified and licensed for the health and safety protection of citizens of Ontario. Similarly, one would assume that everyone would agree that those who install plumbing or pipefitting in our schools, daycare centres or hospitals should be certified and licensed. Indeed, the Trades Qualification and Apprenticeship Act mandates that they must be.

However, as discussed in more detail in our brief, in 2000, the Labour Relations Board decided that it would thereafter ignore that act when dealing with applications concerning compulsory certified trades because it does not see itself as an enforcement branch of the Ministry of Skills Development. The board has therefore decided that persons who are performing work illegally, without any licence or signed contract of apprenticeship, may still be allowed to participate in the formation of a bargaining unit of compulsory certified tradesmen, such as a unit of plumbers and pipefitters. This is wrong as a matter both of public safety and sound labour relations and needs to be addressed.

There are a number of elements of the bill which need to be addressed through further amendments:

—Apart from the expedited response time, there is no other statutory direction for the parties or the board to act expeditiously in construction industry applications.

—The bill should be amended to expressly provide for the assessment of union membership support based solely on documentary evidence, without regard to any petitions.

—No provision is made for the comparison of signatures on union cards to sample signatures provided by the employer, as was the case prior to 1995.

—Further, the bill does not explicitly confirm the power of the board to conduct status inquiries.

Delay in a certification context typically erodes union support. Where a vote is held, delay distorts the outcome,

usually to the union's disadvantage. Whether or not a vote is held, delay in the granting of a certificate by the board can only undermine union support and erode the benefits of collective bargaining. Finally, because of the sporadic and short-term nature of employment in the construction industry, labour relations delay is even more prejudicial in the construction industry context.

While deliberate padding of a list in order to defeat or delay an application might be the subject of an unfair labour practice, Bill 144 itself does nothing to discourage such conduct. In this regard, it should be noted that applicant trade unions must file membership evidence with the board, whereas employers need only provide information: section 128.1.

The list of employees should be supported by a declaration from a responsible employer official declaring that the individuals on the list were neither managers nor confidential employees, that they were actually employed by the employer and at work on the certification application date, and that they spent a majority of their time on that date performing bargaining unit work.

The employer should be required to provide, in a timely fashion and as a matter of course, additional documentary evidence in support of its employee list and declaration. That evidence might include employment application forms, time sheets and other records. Further, the board should be given specific remedial authority to provide for effective relief should an employer be found to have padded the list.

The board now has a greatly expanded jurisdiction, dealing with matters arising under the Employment Standards Act and appeals under the Occupational Health and Safety Act, and several other pieces of legislation in addition to cases under the Labour Relations Act. In other words, the board has fewer adjudicators to do more work.

Construction trade unions encounter substantial delays when litigating even the simplest issues. In non-construction certification applications, hearings are routinely and automatically scheduled to take place four weeks after an application is filed, and two consecutive hearing dates are then automatically assigned. By contrast, the board does not schedule hearing dates as a matter of course in construction industry certification applications.

This problem of delay is not just present in applications for certification. Unfair labour practice complaints, especially those filed in connection with organizing drives, need to be heard and dealt with promptly and effectively. At one time, the statute required that hearings into certain unfair labour practice complaints start within 15 days and continue on consecutive days until complete. Now it can take three or more months just to get a first day of hearing. Continuation dates can then take months longer. Hearings can stretch over weeks, months or years, such that the project or projects which were ongoing at the time of certification are long since completed by the time of the board's decision. Any decision that the board might eventually issue will be of little or no practical benefit.

Even though the board receives fewer unfair labour practice complaints, it takes far more time to dispose of them.

The Chair: You have 20 seconds.

Mr. Ellerker: Many trade unions recognize these limits and choose not to squander their scarce resources in this way. Going to the board is no longer a particularly viable option for many trade unions. The act should be amended to provide for a specific direction for the board to hear and resolve certification and associated unfair labour practice matters promptly, including specified time frames for the hearing and deciding of matters.

The reform promised by Bill 144 would be greatly strengthened by an amendment to include an explicit clear statutory direction in section 128.1 to hear and determine construction industry applications with dispatch. A return to consecutive day-to-day scheduling in certification applications, especially in the construction industry, is long overdue.

The Chair: Thank you very much for your presentation, sir.

Mr. Kormos: On a point of order, Chair: I trust the written submissions will be filed and form part of the record insofar as they're filed. This is one of the most complete and exhaustive analyses of the bill that we've received from the building trades' perspective. I want to commend Brother Ellerker and the people he is speaking for.

The Chair: Thank you, Mr. Kormos, and thank you for your presentation.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 804

The Chair: We'll move on to the next one, the International Brotherhood of Electrical Workers, Local 804: Rod Hilton and Mark Kuehl. Oh, just Mr. Hilton.

Mr. Rod Hilton: Good morning, everyone. I thank you for the opportunity to appear before this committee. My name is Rod Hilton. I'm a licensed electrician, a skilled tradesperson and a member of the International Brotherhood of Electrical Workers here in Kitchener, Ontario.

I am appearing before this committee to speak in support of Bill 144. I'd like to do this by sharing personal experiences that I've encountered throughout my career.

I began my career as an electrician in 1997 within the Niagara region in the unrepresented, non-union workforce of the electrical industry. The working conditions were poor, to say the least. The typical workweek was 60 to 80 hours. It was all paid at straight time, in violation of the labour standards act. Time was banked or not paid at all.

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Safety was never an issue. It wasn't something that was talked about, nor was it something that training was provided for. Riding in the back of a cargo van on a milk crate, with four to six co-workers, to get to a job on your own time was commonplace.

There were no supplemental health care benefits. There was no pension.

To raise any of these issues with my employer would have been like filling out my own record of employment; I would have been terminated immediately.

As a father of two young daughters, I realized that I had to provide more for my family and I then contacted the International Brotherhood of Electrical Workers union. After receiving information, I signed a union card and took charge of an organizing campaign of my employer.

After meeting with fellow employees during lunch hours and after work, I was able to get a number of union cards signed. After having done this, I was identified as the organizer. I was called to my employer's office and I was fired.

An unfair labour practice was filed by the union, which was fantastic, but despite having all of the conversation and my firing on audiotape, it would be nearly a year before the unfair labour practice would be heard and decided upon. My eligibility for employment insurance benefits was questionable, because my employer had marked the letter K, that I had been fired, so you're ineligible to collect employment insurance benefits.

So during that one-year time period, I was unemployed. Thankfully, I found alternative employment. Had I not, I would have continued to have remained unemployed, not being able to provide for my daughters and my family.

My co-workers rallied behind me. They donned union paraphernalia and were subjected to the same treatment that I was. Some were fired; others were just placed at job sites where they were isolated by anti-union supporters.

I wish I could say that my experiences going through the unionization process were the exception, but unfortunately, it's the norm here in Ontario.

In 1999, I commenced my employment as provincial organizer for the IBEW. I've witnessed dozens and dozens of workers subjected to dismissal, intimidation and threats. I've filed numerous unfair labour practices and spent countless days at the Ontario Labour Relations Board, fighting for these workers' rights.

Again, because of the transient nature and the mobility of the workforce, before these hearings come up, the job is over and done with, and that employee has gone without benefits or a paycheque for several months or years before the hearing comes to light. This definitely does have a chilling effect on organization drives.

Many of the workers with whom I have the privilege to deal are new Canadians, men and women who desperately need the remedial protections provided for within Bill 144. I'm specifically highlighting the interim reinstatement and the remedial certification process.

I feel that the need for legislative change is very urgent. I think the time for the legislative change is now. I believe that Bill 144 creates an environment that is fair

and equitable to both parties, both labour and management.

I think we all need to focus on the real issue here: It's not about labour and management; it's about the inherent rights of the workers to exercise their freedoms under the Ontario Labour Relations Act. They should be able to exercise their rights under the Ontario Labour Relations Act in a climate where they can show confidence and not fear being dismissed for their activities. Thank you.

The Chair: We still have three minutes for questioning. I believe, Mr. Flynn, that you are the first one.

Mr. Flynn: Thank you for the presentation. You were fired for trying to organize a union, basically. That was your message.

Mr. Hilton: That's correct.

Mr. Flynn: And the old rules allowed you to be fired.

Mr. Hilton: Well, not that it allowed for it to happen, but there was no remedial action, such as the interim reinstatement provided for in Bill 144.

As people begin to get fired or laid off, whichever the employer chooses to label it, the chilling effect is very present. Employees who wish to be represented by a trade union will not sign cards or continue to openly display their support for it, for fear of being released from employment and not being able to provide for their families.

Mr. Flynn: So for a short period of time you went through some hardship as a result of trying to implement what you thought was a right that you had in the province of Ontario.

Mr. Hilton: That's correct.

Mr. Flynn: With the changes that we're proposing as a government, had you taken that same move at that same time and attempted to enforce that right, do you think the result would have been different?

Mr. Hilton: I'm a person of conviction, and I would have stuck to my guns regardless, because I'm seeking a better way of life, but for people who don't have a strong conviction, at least it gives them some support. It may provide that extra encouragement to stick to their convictions, knowing that if they are wronged, there is a process to get their jobs back.

Mrs. Witmer: Thank you very much, Mr. Hilton, for being here today. I did appreciate listening to your personal story. I guess what we need to do is ensure that there is fairness and balance and opportunity for individuals, whether employers or employees, to always be able to express themselves freely. Thank you very much.

Mr. Kormos: Thank you, Brother. Yours is an incredibly valuable contribution, because it's not lawyers analyzing the innards—nothing against lawyers analyzing the innards of the bill—but it's real life; it's a real story. It's a very important story. And I know you. Here you are; you're educated and capable. You know your way around institutions and organizations. You're no pushover, because I know you from Niagara.

Take yourself and the chilling effect that your firing effect had on other workers. Replace you with a Vietnamese woman or a woman from South Asia, Sri Lanka, or any number of new Canadian immigrants, women who

clean other people's crap from the toilets in hotel rooms, and imagine how much more chilling the effect would be and how much more oppressive that would be. You'd take that union hat and it would be tossed so far—because you've got the background and the wherewithal, as you say, being a person of conviction. It's got to be tough for other workers who don't have your skills.

Mr. Hilton: It certainly is, and you bring up a good point, Mr. Kormos. For example, the decertification lists that were being posted: Most of these new Canadians don't realize their rights under health and safety standards or the Ontario Labour Relations Act as it relates to being able to join. So why is it there, demonstrating how to decertify, something that they don't even know how to get into?

The Chair: Thank you very much for the presentation, sir.

STEELWORKERS ONTARIO SOUTH CENTRAL AREA COUNCIL

The Chair: We'll move on to the next presentation, Mr. Gary Schaefer from the Steelworkers Ontario south central area council. Please have a seat. You can start any time you're ready.

Mr. Gary Schaefer: Good morning, Mr. Chair and committee members. I would like to introduce Wanda Power, who is the chair of the women's committee of the south central area council.

The United Steelworkers in Ontario: The United Steelworkers is an international union representing approximately 80,000 members in Ontario. The Steelworkers' south central area council represents over 7,000 members in Guelph, Cambridge, Kitchener and surrounding areas. As one of the most active organizing unions in Ontario, we are uniquely placed to provide insight into changes necessary to the current certification regime in Ontario.

Steelworkers' position on Bill 144: Our union was pleased when the Liberal Party committed during the last provincial election campaign to bring fairness back to workers' rights in Ontario. However, in the Steelworkers' view, the government has entirely failed to keep the promise to Ontario workers with the introduction of Bill 144, the Labour Relations Statute Law Amendment Act.

In particular, the decision to return card certification only to the construction sector is a fundamental betrayal of Ontario's most vulnerable workers. To be clear: We support the reintroduction of card-based certification to Ontario's construction workers. However, to exclude all of Ontario's other workers from the most important amendment represents, in our view, an inexcusable decision to discriminate against those who are most in need of protection. By excluding all non-construction workers from the right to a fair certification process, Bill 144 fundamentally discriminates against women and new Canadians who work in the lowest-paid sectors of our economy. As a result, we cannot support this bill, and we urge this government to extend card certification to all sectors.

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We acknowledge that Bill 144 contains several amendments to the Labour Relations Act, some of which are positive. However, the failure of the bill to extend card certification to all workers is such an omission that it neuters any positive effects the bill may have. Indeed, we feel that this issue is of such importance that we will restrict our submission to the extension of card certification to all Ontario workers. In our view, unless the basic discrimination contained in Bill 144 is removed, all of the other changes in the bill will do little or nothing to provide Ontario's workers with meaningful access to unions.

The result of the Progressive Conservative attacks on labour rights: What has been the effect of the elimination of card certification? The number of Ontario employees who have been allowed to exercise their right to join trade unions has plummeted. Not only are fewer employees joining unions, but the success rate of applications for certifications has also dropped substantially.

A further indicator of the unfairness of the current legislation is the dramatic drop in the success rate of certification applications. This dramatic drop in the number of new union members can only be explained by the Progressive Conservative attack on employees' rights. There is no reason to believe that these numbers reflect the fact that Ontario employees no longer want to join unions. Indeed, our experience suggests quite the opposite.

As employees have found it more and more difficult to organize, unions in Ontario are filing fewer and fewer applications and are only filing those applications that are likely to succeed. Notwithstanding the fact that unions are only filing stronger applications, the success rate is still dropping sharply.

In short, the previous government's attack on the right of Ontarians to join unions of their choice had a disproportionate effect on Ontario's lowest-paid, most vulnerable workers. These workers are often women and visible minorities. Hence, the current Labour Relations Act has the particular effect of excluding women and visible minorities from access to workplace representation.

It is particularly unjust, therefore, that the Liberal government should seek to remedy this problem by excluding these same workers from the most important change in Bill 144. The effect of Bill 144 is to maintain and reinforce this basic discrimination against women and visible minorities, who so desperately need union representation.

The need for card certification in all sectors: It is clear from the content of Bill 144 that the government has at least some understanding of the need for card certification. The decision to return card certification to the construction sector is proof of this understanding. However, we know that some employer groups in this province are strongly opposed to card certification. We understand that those forces are urging the government to maintain the current certification system. Most importantly, we suggest that these same forces have apparently

persuaded the government that it is not possible to return card certification to all Ontario workers. This view is profoundly wrong. On the contrary, in our submission, it is the present certification system that cannot be justified.

In our experience, the present system of union representation votes allows so great a level of employer influence, coercion and control that employees are not able to exercise this choice in a free manner. Currently, employees have to make that choice twice: first by signing a membership card and then by voting for the union. Further, the voting process is deeply flawed. Votes take place on the employer's premises in a context that provides the employer with far greater access to employees than is provided to the union.

The only purpose served by making mandatory representation votes the only path to union certification is to give employers the opportunity to coerce employees into abandoning their support for the union.

Those who insist upon mandatory certification votes justify their position on the basis of democratic values. However, representation votes are profoundly undemocratic. They are simply a licence for employers to interfere in the democratic selection of a trade union. Furthermore, as a tool of progressive public policy, card certification procedures promote healthy relationships between employers and employees by helping to avoid a pitched battle between management and employees. In certification votes, voting in favour of the union is characterized by the employer as tantamount to a vote against the employer. Therefore, card certification procedures promote healthier labour relations in the workplace by avoiding the workplace polarization that often results from anti-worker campaigns that naturally arise from a vote-based system.

These benefits, however, can only be achieved if card certification is extended to all Ontario workers. Bill 144 will only serve to exacerbate the increasing gap between the predominantly male unionized construction sector and those sectors, such as the service sector, where workers are poorly paid and receive no benefits. It is the predominantly female workers in the non-construction sectors who need unions the most, yet they are precluded from the most basic right that has been partially restored by Bill 144.

Ms. Wanda Power: Conclusion: Bill 144 discriminates against Ontario's most vulnerable workers. There is no precedent in the labour relations history of this province for discriminating against workers in the manner contemplated by Bill 144. While it is true that the construction sector has been subject to a different statutory regime, those differences have largely revolved around the need for different bargaining unit structures in the construction sector. These differences are, to some extent, necessitated by the often short-term nature of construction work. However, it has never been the case in Ontario that the certification procedures have been completely different in different sectors. As such, Bill 144 breaks new ground by drawing a fundamental distinction between the construction sector and all other workers.

There is simply no justification for this discrimination. It is simply not true that the particular nature of the construction sector requires card certification. If anything, the reverse is true. Organizing is most difficult in non-traditional sectors where union density is low. It is in these sectors that employers are most likely to unlawfully intimidate and coerce workers during organizing campaigns.

The construction sector is highly organized and highly paid. Large construction employers work in partnership with construction unions who enjoy province-wide bargaining units for large projects. But it is not these male workers in the construction sector who most need the benefits of card certification. It is the service sector workers, like the thousands who work for Wal-Mart, who most need access to unionization. It is the women in the nursing home sector or the low-wage security industry who most need unions. It is the visible minority workers earning \$9 an hour in small, non-union manufacturing businesses who most need unions. Yet Bill 144 does virtually nothing for these workers. Worse, it treats them as second-class citizens by denying them their basic right to join a union, free from illegal intimidation and coercion by their employer.

If the Ontario government is truly concerned about nurturing and protecting employee free choice and permitting employees to choose to join a union of their choice, the card-based certification system must be reinstated for all workers. We must be very clear on this point: A decision to maintain the current vote-based system in the non-construction sector, even with some improvements, can only be seen as an explicit choice in favour of an inherently unfair and undemocratic system. In other words, if the government chooses not to make this basic and fundamental shift back to a card-based system, it can only be seen as having made a choice in favour of employers over employees, in favour of the rights of capital over labour and in favour of the continued erosion of employee rights in Ontario.

1040

We thank you for taking the time to review these submissions. No issue is more important to our union than the right of Ontario workers to democratically join the union of their choice. It is an inherent part of a democratic society that those democratic rights we cherish, including the right to unionize, be granted equally to all citizens.

In our submission, Bill 144 fails this most basic test. Therefore, we urge the Legislature to extend democratic card certification to all Ontario workers.

The Chair: Thank you very much for your presentation.

CLEANPAC

DALY CONSTRUCTION LTD.

The Chair: We'll move on to the next presentation, from Cleanpac. Good morning. Please start any time you are ready.

Mr. Nigel Botterill: Good morning. I'm Nigel Botterill from Cleanpac in Cambridge, and I have my colleague Jim Daly, who intends to speak briefly after me.

I speak today as a local employer from Cambridge, Ontario, having moved from the UK just 11 months ago to set up in business and employ persons from the local community. More importantly, I also speak as representing the Brethren, of whom I am sure many of you here today would have heard and had contact with.

Being one of the Brethren myself and seeking to walk a pathway of separation as set out in the Holy Scriptures, "No one going as a soldier entangles himself with the affairs of life, that he may please him who has enlisted him as a soldier"—2 Timothy 2:4, and also it says, "Strive diligently to present thyself approved to God, a workman that has not to be ashamed, cutting in a straight line the word of truth"—2 Timothy 2:15, on the basis of just these few words alone, I could not entertain the idea of being part of a trade union organization or allow such an organization to have any part in my business.

Having recently learned of the proposed legislation, Bill 144, it appears there is no provision for persons such as ourselves, which is rather horrifying for me after leaving the UK where I employed 11 persons and there was provision for this by the government. I believe it is so in Australia and New Zealand too. If Canada were a Communist country, I could understand that such provision would not be made, but as this is not the case and surely we are looking for strong government in this country, in fact we pray regularly for government and men in power, then we would expect at least a conscientious objection clause. This is essential for persons such as ourselves; otherwise the consequences could be serious. There are many Brethren employers throughout Ontario, all of whom would be affected by this bill, and the options, if unions are allowed into our businesses, are just not there. We would either close down or sell the company. This could be with the loss of jobs, which would add to a raise in unemployment levels which, as we know, costs the government money.

I am not here today to speak against persons who are involved with trade unions exactly, but I do feel obligated to say that such a body is not of God and I have seen, especially in the UK, that it results in dissatisfaction and disruption—

Interruption.

The Chair: Excuse me. I did ask earlier—there is no need for such intervention.

Interruption.

The Chair: Sir, please.

Mr. Botterill: —where the master and servant relationship is turned around. If a person is hired at a fair wage in good working conditions, he or she signs a contract to accept these conditions. Why should anybody be allowed to come in between that relationship between employer and employee? A trade union association comes between the employer and his employee and causes disloyalty, which does not make for good working conditions.

Let's take a look at the Constitution of Canada and the Canadian Charter of Rights and Freedoms. One of the first things mentioned is freedom of conscience and religion—how does that fit into this proposed legislation?—and then freedom of thought, belief, opinion and expression, freedom of peaceful assembly, freedom of association. There must be a definite amendment to this bill in the event of it not being totally scrapped in order to even come into line with the charter, let alone to allow God-fearing persons to continue to make an honest living with a good conscience before a holy, righteous and sin-hating God.

To make our position as Brethren clearer, we do not belong to any association of men whatever—business, sports, personal. We do not have fellowship with those we do not partake of the Lord's Supper with, as we are associated with Christ and seek to hold ourselves for him. The scripture says, "Be not diversely yoked with unbelievers; for what participation [is there] between righteousness and lawlessness? Or what fellowship of light with darkness? And what consent of Christ with Beliar, or what part for a believer along with an unbeliever? And what agreement of God's temple with idols? For ye are (the) living God's temple; according as God has said, 'I will be their God, and they shall be to me a people. Wherefore come out of the midst of them, and be separated,' saith the Lord, 'and touch not what is unclean, and I will receive.'" 2 Corinthians 6.

Every man and woman should have the right as before God to stand on their own two feet in relation to their employment without intimidation from union workers and peer pressure from work colleagues to join an association which they may hardly know anything about. We all know it happens, and this situation will get worse with the acceptance by government of Bill 144.

So with a heart which I can humbly say that has been won by Christ and with a sense of duty toward my fellow men, especially those who have accepted Christ as their saviour, I would appeal to the powers that be to think carefully—as scripture says, "Think so as to be wise"—about this proposed legislation and ensure that a way is left open for those who cannot and will not give up a pathway of separation to belong to an association of any form.

The Chair: Any other comments? We can have questions, of course, if you have no comments.

Mr. Jim Daly: Sure. I have a few things I could say.

The Chair: Mrs. Witmer, would you mind? Thirty seconds each.

Mrs. Witmer: I think the gentleman said he did have a few things to say.

The Chair: Go ahead.

Mr. Daly: Like Nigel, my friend here, I'm a practicing Christian. I seek to be a practicing Christian in the world that we know today. Personally, I'm an employer from Cambridge. My family has been in the construction business since 1946 and have employed personnel since then.

Firstly, I'd like to point out that we're not public speakers and we don't represent any organization as

such. We're individuals, and a lot of the individuals that are Christians in this part of the country and in this city are persons that you wouldn't find at a forum like this or would speak, although I believe that we do represent a large body of persons who do have a Christian background that goes back to conscience. There are certain things that we do not do and will not do. As Nigel pointed out, many of us have lost employment because the workplaces have become certified. Many have had to change their work because of compulsory associations that have arisen. So this is the reason why we would like to see a conscience clause installed in whatever legislation comes to pass here. We disagree with the principle of collective bargaining. Of course, we're hearing a lot of the other side of the story here.

I'd just like to say that in the province of Quebec, we've been hearing persons speak about unionizing the lower-wage sector. This sounds very good and honourable, but in the province of Quebec, the construction industry itself has been largely unionized, probably 95%, right down to the residential end of construction, and in that province, what's happened is there's a great underground industry that has sprung up, which is tax-free. The government doesn't know how to draw the tax back.

The Chair: Thank you. That's 10 minutes on the nose. There is no time for questioning. Thanks very much for both presentations.

1050

WATERLOO REGIONAL LABOUR COUNCIL

The Chair: I'll move to the next presentation, which is the Waterloo Regional Labour Council. Is someone present, please? Please start, sir, whenever you're ready.

Mr. Rick Moffitt: I'd like to thank the committee for giving me the opportunity to make this presentation on behalf of the Waterloo Regional Labour Council. The labour council has more than 26,000 members affiliated in the Waterloo region, and they represent workers from both the public and private sectors, working in both blue-collar and white-collar jobs.

I'll start by apologizing for my crack about Wal-Mart, but it's very difficult for people involved in the union movement to listen to somebody have the gall to sit in a public place and defend Wal-Mart, one of the most notoriously nasty employers on this planet—a company that has chosen to shut down a store that was unionized in Quebec after six months of refusing to come to the negotiating table to try and negotiate a deal. For somebody to stand up and say somehow that proposed changes to the labour law are unfair to Wal-Mart is as outrageous a thing as I have ever heard. Some of the other things that were said by the same speaker were positively Orwellian. Penalty certification: I have never heard anything like this in my life. It's really incredible to hear something like that.

The time has come for the Liberal government to rebalance Ontario's labour laws, as they promised in fact

during the election campaign. The proposed legislation, Bill 144, doesn't begin to go far enough down the road to restoring balance between the interests of workers and employers. The new government, in my opinion, is doing the absolute minimum to allow themselves to claim that they have reformed the labour laws.

This legislation doesn't begin to address the needs of workers in this province and doesn't begin to reverse the draconian changes the Harris government implemented. It is unacceptable to advertise yourself as an agent for change and then follow that up by doing so very little. The slash-and-burn tactics of our previous government are being followed by the tiniest incremental changes that we could imagine. The Conservative government of Mike Harris rolled back the state of labour relations in this province 30 or 40 years, and this government is now proposing to roll them forward 30 or 40 minutes.

The legislation has been rushed without adequate consultation and without adequate reference to the changes made by the previous government. Organized labour is of the opinion that it was rushed to deny workers the ability to mount a serious lobbying campaign aimed at forcing amendments that would properly reflect the rights of all workers.

The 60-hour workweek, for instance, has yet to be eliminated. It has in fact been enshrined by flawed legislation that this government brought out. All a company has to do now is apply for permission to the Ministry of Labour to have a 60-hour workweek. It is shocking that any sane member of a modern society would suggest that this is acceptable. Employers maintain the right to average hours of work and deny overtime pay to employees, all provisions that were brought in by the previous government. Who does this affect most? Our most vulnerable workers: women, recent immigrants, part-time workers, casual workers and students.

The government has agreed to hold hearings belatedly, and this government committee has not toured the province, as is the norm. They have not gone out across this province to allow citizens an opportunity to make presentations: two hearings of two and a half hours in Toronto and one day here in Kitchener. You have denied the citizens of the rest of the province the capacity to attend these hearings.

It's significant to examine who presents at these hearings. It's also significant to look at and think about who doesn't attend these hearings. People unable to commute to one of these two locations were unable to address their concerns, and they're our most vulnerable workers. They're unable to secure time off during the workday because of socio-economic and cultural workplace barriers that are already in place.

It appears that the government is doing everything in their power to court business interests with an eye to future elections. Obvious examples that need to be addressed, in our mind, quickly, are proper card certification and the reintroduction of anti-scab legislation in this province.

Card certification is a process whereby union organizers ask workers to sign cards seeking union cer-

tification for their workplace. Historically, if a union succeeded by getting 55%, they were automatically certified. The right to card certification is not some new, Communist-inspired policy objective of organized labour. It has a long history in Canada; it has a long history in the province of Ontario. First introduced in 1944, we've had Liberal, Conservative and NDP governments in power. It has in fact been a cornerstone of labour policy, not only in Ontario but across this country. Card certification has provided a framework for the federal and provincial legislation across this country.

The government has refused to this point to restore full card certification to all citizens. It has proposed restoring a card certification process for construction unions and denying it to all other workers in the province. It's hard to comprehend how democratic rights and a fairness in process are to be restricted to merely one sector of the workforce. The provisions in Bill 144 patently discriminate against all other workers in the province, and this must be addressed before it becomes final.

It is difficult to look at the workers in the construction industry and not suggest that the legislation is at least discriminatory in their favour and discriminates against other workers. I respectfully suggest that many will go further in their descriptions of this. I believe that workers in the building trades should have the protection afforded them in this proposed legislation precisely because I believe all workers in Ontario should have those same protections. Those workers most in need of protection are those who are afforded the least amount of protection.

Other flaws in the legislation: The legislation must help the underemployed become employed. It must put limits on term contracts that are used by companies, to ensure that workers who stay with a company beyond a fixed period of perhaps six months are considered permanent employees. Companies are using term contracts to create an underclass of workers in this province.

Anti-scab legislation must be restored in the province, quite simply because it works. Let business put aside their ideological beliefs and examine the facts. Anti-scab legislation forces both parties back to the negotiating table, where all collective agreements must be completed. Anti-scab legislation worked in Ontario for five years. It's still working in Quebec after 20 years. If you look at the amount of time lost to strikes, you'll see that it has in fact worked.

I need to point out that a number of the people who are labour activists have left this hearing. That's because they've all gone down to Ingersoll right now. They have headed down to the IMT plant, a plant that is busing in scab labourers. These workers have come up from the United States. They've brought these people from the United States into Canada as scab workers to keep that plant going. That company has now gone to court to get injunctions to stop the CAW and other unions from showing up there to protest and picket and support people who are out of work.

If people think that the community of Ingersoll is happy about that, they're wrong. Those workers have been removed by small business owners who don't want

them in their hotels. There are restaurant owners down in Ingersoll refusing to serve these people. All of the small business owners in Ingersoll are looking in horror at what is going on in that community and they are disgusted by this. They don't want these people's business. They want the people who live and work in their communities in good-paying jobs, back on the job, spending their money in their community and supporting their community.

The government and business would do well to remember that there are two parties that own the collective bargaining agreement. Both employers and workers benefit from well-balanced labour legislation. Workers do not seek workplace disruptions, nor do they enjoy the loss of wages or time away from their work.

Ontario's voters, in the main, voted to choose change, and the Liberals were certainly right about one thing: It was time for a change. There's still time to change Bill 144. Let's get this right, please.

The Chair: Thank you very much for your presentation. There is no time for questioning.

ONTARIO SHEET METAL WORKERS' AND ROOFERS' CONFERENCE

The Chair: We'll move to the next presentation, the Ontario Sheet Metal Workers' and Roofers' Conference.

Mr. Kormos: On a point of order, Chair: Could this committee, during its lunch hour, please join those workers on that picket line in Ingersoll? I'm seeking unanimous consent.

The Chair: Do I hear unanimous consent?

Mr. Kormos: Agreed. Unanimous consent for this committee to join those striking workers whose jobs are being stolen by scabs.

The Chair: Thank you, Mr. Kormos. We'll move on. You can start any time you're ready, gentlemen.

Mr. Tim Fenton: Good morning. My name is Tim Fenton, business manager of the Ontario Sheet Metal Workers' and Roofers' Conference. To my immediate left is Mr. Jerry Raso, our legal counsel, and to my far left is James Moffat, our training and trades coordinator.

1100

The Ontario Sheet Metal Workers' and Roofers' Conference is very pleased to be appearing before the standing committee on social policy with respect to Bill 144, An Act to amend certain statutes relating to labour relations. We are the Ontario provincial employee bargaining agency for ten ICI local unions of the Sheet Metal Workers' International Association in Ontario. The conference represents approximately 8,000 unionized roofers and sheet metal workers in the ICI sector of the construction industry.

The Ontario Labour Relations Act and the proposed amendments are extremely important to our members and our union. Being active in representing our members in the construction industry, we are appreciative of the opportunity to share our experiences and insights with you on this important bill.

Our union has always supported the right of workers in Ontario to have unions certified and representing them by way of automatic certification through a card-based system. We believe this right should be extended to all workers in Ontario, not just construction workers. By excluding non-construction workers, Bill 144 does not go far enough with respect to certification through a card-based system. With this in mind, however, the conference endorses and supports Bill 144 and urges the government to pass each and every proposed amendment to the act.

I'll now turn the technical portion over to Mr. Raso.

Mr. Jerry Raso: Thank you. Just one comment before I start, with no offence to the previous speakers from two before me, I too am a practising Christian and I strongly support the right of workers to join unions. I didn't bring it with me, but if there's any question, I refer this committee to the late Pope John Paul II's encyclical on work, in which the Catholic church affirms the right of workers to join unions.

Like the previous speaker, we support Bill 144. We believe it's a good step. There's a lot more damage done by the Harris regime that could be undone by this government, but we believe this is a good first step, and we strongly support the measures that are contained in Bill 144.

Specifically, I'm going to talk about the certification provisions, with respect to taking out anti-union propaganda and not requiring unions to reveal their salaries. We support that, and there's really nothing to say.

In terms of the certification provisions, we support it because, number one, it's good for workers, it's clearly more democratic than what we previously had with votes, and it reduces opportunities for unscrupulous employers to interfere in the process and cause intimidation and fear and fire workers to prevent them from exercising their democratic right to join a union. It's good for the industry as a whole, because these provisions will or should reduce conflict and instability during the certification process, and that's good for the construction industry. Reducing instability and conflict is good for everybody. It's also good for the province as a whole and the economy as a whole, because hopefully what will result, or what should result, is increased unionization, and unions are good for the province.

The first thing is occupational health and safety. Unions actively work to promote health and safety. We police job sites. We make sure our health and safety committees are working. We make sure companies have health and safety reps. We police jobs sites and we actively work to enforce the act.

The second thing that makes this good for the economy as a whole is that it will help to reduce or eliminate the underground economy. You will find the underground economy exists in the non-union sector. Unions make sure their workers, their members, have their Workplace Safety and Insurance Board premiums paid, they make sure their EI premiums are paid and they make sure that CPP and income tax are paid. So if you want to

eliminate the underground economy, promote unions in Ontario.

Specifically, the three provisions we strongly support: restoring automatic certification where an employer commits an unfair labour practice and the true wishes of the workers can't be ascertained by a second vote; restoring interim orders to the Ontario Labour Relations Board, and in particular, giving the board the power to reinstate workers fired during an organizing drive. Interim means that they can do it on an expedited basis rather than what takes place now at the board, where it can take six, seven, nine months, even up to a year, to get a worker back to work. Thirdly, restoring the card-based system in the construction industry. Again, as Mr. Fenton said, we believe this provision should be for all workers in Ontario, not just construction workers, but at least give it to construction workers. The key here is the word "restore," because there's nothing radical here. What we had with a card-based system, what we had with automatic certification, takes us back to the 1950s. That's when these provisions came in. We had them from 1950 to 1995, until the Harris regime took them out.

The reason is that, as I said, it's good for workers and it's good for the industry. First votes and second votes don't work. They're not democratic. Every time you have a second vote or a first vote, you have an opportunity for an unscrupulous employer—not all employers do this, but some do—to get involved, intimidate and instill fear into the workers, and to give them the message, "You're going to lose your job if this union comes in, and that's why I want you to vote against the union."

A second vote doesn't do it because the damage is done once the employer gets the message through. Our union had a case once with a company called Maverick Mechanical. We had 100% of the workers sign cards. The company circulated an anti-union petition and got the word out that they didn't want a union there. At vote number one, we had zero workers show up to vote. We lost nothing-nothing. We went to the board and had our hearing. We got an order for another vote. What happened? Again, not one worker showed up for the vote. Why? Because the damage was done.

The second point is in terms of interim orders reinstating workers. That's extremely important. When you fire a worker, you have got the message out to all workers, "This is going to happen to you." It instills fear and puts a complete chill in the organizing drive. It sends the message to everyone, "Don't support this union," and again, it's unfair to the individual worker who has been fired for exercising his or her democratic right to join a union.

Having said that, in terms of the positive benefits, our union has a few constructive suggestions for amendments, and they all centre around the concept that justice delayed is justice denied. In our brief, at around page 8, there is a quote from the Supreme Court of Canada in a case called *Dayco (Canada) Ltd. v. CAW-Canada*. It states very firmly that you must have quick resolutions to conflict in labour relations, because conflict in labour

relations is bad for everyone. If it takes a long time, if you have justice happening a year or two years down the road, you have justice denied. I refer you to that quote. The problem we have with Bill 144 is that there are no provisions to make sure that what it provides for occurs on a timely basis.

There are three things we request: First, put some time provisions in the act. Again, this is restoring it to pre-1995 and the Harris regime. For expedited hearings and applications for certification, we believe there should be a hearing within 15 days of any dispute. The labour board should hear the dispute consecutively, on a day-to-day basis, until it's resolved, then issue a decision within two days. Again, if you go to the board and you get a decision or a hearing one or two years down the road, it just doesn't do the job.

Secondly, the bill, we believe, prevents anti-union petitions from being involved in the process. The problem is lawyers. It's silent and there may be room for argument, so we believe anti-union petitions should be explicitly removed. The labour board has never been successful. All they are is an opportunity for employers to interfere in the process.

One final point: When you put in an application, the union organizer has to sign a declaration verifying that the evidence the union is submitting is true. When an employer submits a response, they're not required to do that. All they have to do is list workers they believe have a right to vote. We believe a declaration should be required for employers, where employers explicitly have to declare, "This is an employee of the company; they were at work on the day of the application, and they are entitled to vote because they're engaged in bargaining unit work."

Those are the three suggestions to avoid and reduce delay. If this process goes on for a year or two years, as it is now, none of this will be accomplished and Bill 144 will be meaningless.

The Chair: Thank you very much for your presentation. There is no time for questions.

CANADIAN LABOUR CONGRESS

The Chair: We'll move on to the next presentation. Barry Fraser, please. Please start any time you're ready.

Mr. Barry Fraser: Before you start running the clock, I want to make a correction on who I am. My name is Barry Fraser. I'm a past president of the Ontario Provincial Building and Construction Trades Council, not of the Canadian Labour Congress.

The Chair: OK. The record will indicate that. Please proceed.

1110

Mr. Flynn: You got a promotion.

Mr. Fraser: That would be a demotion, I think.

The other issue, of course, is that I and my colleague here are both representatives of the Canadian Labour Congress in Ontario.

The Canadian Labour Congress fully supports the card-based certification. I don't have to go into the history. There's probably five decades of why it came about, and it came about by a Conservative government.

In the last elections, when the Tories were in, they rescinded Bill 40. It was the most progressive legislation that the province of Ontario ever had in its history. We had anti-scab legislation. Labour disputes and collective agreements and organizing were working well and making the entire province a more prosperous and fair province for workers.

Having said that, the Canadian Labour Congress has about three million members, but I want you to be clear that we represent all workers: those who are organized and those who are not. It's the Canadian Labour Congress and our subordinate bodies and affiliates who have always fought to improve the minimum standard of living, against all odds, and that benefits all workers: health and safety, education, and so on.

We fully support that the building trades have the card certification system, but they're 5% of the workforce. The other 95% need it every bit as much. The building trades unions have a certain advantage: If they go out and sign up 30 members and lose the certification, they can still bring those 30 members into their union and in that way capture the market by having control of the labour force. Other unions do not have that affordability.

The 95% of workers who cannot join because of the intimidation that exists out there—and I hate to say it in a free society, but today, in most cases, if you sign a card and the employer finds out, you will be fired: maybe not today—it might take a couple of months—but somehow you'll be weeded out of that employer's workplace, especially where some employers are very anti-labour.

So it's incumbent upon this committee to make sure that the wishes of workers are truly known. The present secret ballot that exists now does not work. There are many, many cases, which I won't go into, where they don't work, where unions sign up 100%, and when it goes to the vote, they sometimes, as was said, lose the vote because of the intimidation and coercion.

Yesterday in Ontario and across Canada, and in many countries in the world, we celebrated the Day of Mourning for workers killed and injured on the job. I say that because when we get out there and can organize and bring education and assistance to workers, we do a lot to bring those numbers down. I think it's important that we have a society where workers can freely join unions without that intimidation and coercion that exists with some employers. I say "some" because there are some who are much more enlightened.

With that, I'll pass it over to my colleague.

Ms. Sandi Ellis: My name is Sandi Ellis, and I am a Canadian Labour Congress representative for south-western Ontario, a territory from Guelph to Windsor.

I would just like to comment that two days ago I was on that picket line at IMT in Ingersoll when the federal leader of the New Democratic Party joined us for a short time. There were scab buses both going in and coming out, of course with blackened windows. I understand

from the local union there that there are approximately 40 people working inside the plant doing their work. There were three buses. Now, why does it take three buses to take 40 people into and/or out of a workplace that's on strike? I ask you, who is intimidating whom? The employer? Yes, in that case, and it's just another reason why anti-scab legislation is so badly needed in the province of Ontario.

I'd also like to say that I'm amazed at how we can manipulate words, and as a word fanatic, I love to hear when people use, abuse, misuse and maluse either words that are written, like the Bible, and/or words that are written in collective agreements or constitutions or anything. I too want to say that I do consider myself a Christian. I'm not a member of the Christian Reformist group or the Family Coalition, but I do support the Christian values that call for social and economic justice for all.

One of the previous speakers said that there were many Brethren employers in Ontario that might leave because of this legislation, and they talked about the relationship between the master and the servant. Well, let me tell you, ladies and gentlemen, that that's exactly the concern of many employees, that they are treated like servants: servants who must humble themselves before their masters and take whatever form of discipline, be that any form of discipline, that gets meted out to them. That could be intimidation. That could even be physical intimidation and discipline.

The construction trades' concerned employer representatives spoke about their work being kind of permanent at six to 12 months, and then they hire the same people back again. They're not temporary, they say. I ask you, in all of your parties, what do you consider a job that lasts six to 12 months? Is that a permanent full-time job? I also ask you, for that other period of time that they're not working in those short-term jobs or seasonal jobs, where do those employees go? Since they are able to hire them back each and every year, they must not go anywhere else, except on our other social programs that we as workers, and people as employers, actually pay for. They, then, are abusing the very social programs that they themselves decry as being too generous, too expensive and too great a tax on their payroll. They are the ones who are abusing it. People don't lay themselves off; they get laid off. People don't walk away from work, not in the 21st century. They lose their jobs. They don't want to be on those programs any more than anybody thinks they want to pay those payroll taxes.

You need to extend card-based certification back to everybody in the province of Ontario, and you need to bring back anti-scab legislation. We had the best peaceful period of time in labour relations during the period in which we had anti-scab legislation and we had card-based certification for all.

The Chair: Thank you. There is one minute. Mr. Kormos.

Mr Kormos: Thank you, Sister Ellis, Brother Fraser.

It's clear that, look, a building trade rep has got to—and the sheet metal workers were, interestingly, very

careful. They said they urged the government to pass this act. I can't and won't, as a New Democrat, endorse a bill that excludes the vast majority of workers from card-based certification. The last thing I'm interested in is the Minister of Labour standing up and saying, "Well, Kormos supports giving card-cert only to the building trades," and that's absurd.

Now, I put to you that we've got some of the most progressive members of the Liberal caucus here. They are. They are clearly on the progressive wing of that caucus. I put to you, and to them, that it is their job—I've been a backbencher in a government where I had occasion to vote against my government, and I did it because it was the right thing to do. I put it that it's their job to accept amendments to this bill which extend card-based certification to every worker in this province.

Will they have done their roles justice by doing that?

Ms. Ellis: Exactly.

Mr. Fraser: Absolutely. And you, representing the party you do, will be fully expected not to support legislation that doesn't protect all workers.

The Chair: Thank you. Mr. Flynn.

Mr. Flynn: Just so I'm clear on that point, then, because certainly I think we're starting to get down to the essence—and I enjoyed your presentation. I thought it was very balanced, and I understood it quite clearly.

We've brought in interim reinstatement. We've brought in remedial certification, or we're proposing to, for outrageous behaviour on both sides, either union or employer. We're bringing card-based certification in for the construction sector. We're taking away the decertification posters, taking away salary disclosure. We've had suggestions that the process needs to be speeded up, and that no post-application petitions be allowed to decertify.

Now you're telling me that if we can get all of those things, except at this point in time card-based certification for the rest of the unions, we should not support this legislation?

Mr. Fraser: Correct.

The Chair: Thank you for your presentation.

Mr. Fraser: I have a gift for each of you. It's a Day of Mourning pin, which represents April 28, and the Canadian Labour Congress pin, which will help you draft the right legislation.

The Chair: Thank you. The clerk will receive it on our behalf.

1120

SOUTHWESTERN ONTARIO
STEELWORKERS AREA COUNCIL
WOMEN AND HUMAN RIGHTS
COMMITTEE

The Chair: United Steelworkers, Ms. Lesley Raposo. You can start any time, ladies, please.

Ms. Lesley Raposo: My name is Lesley Raposo and I'm representing the Southwestern Ontario Steelworkers

Area Council, women and human rights committee. This is Carrie Robinson, another Steelworker sister.

In total, the council represents about 5,000 members and administers 50 collective agreements in the south-west region between Woodstock and Windsor. Our members are employed in almost every facet of the economy. We would like to direct our comments today to the sectors that we feel are most affected by the government's inaction, those being nursing homes, credit unions, public sector, call centres and retail.

Although Bill 144, the Labour Relations Statute Law Amendment Act, contains some positives, taken as the minister suggests, as a bill that seeks to reach balance and fairness, one vital point alone undoes any attempt in this direction, that point being the lack of a return to card-based certification. Because of this fact, we will limit our comments to this fundamental flaw.

Card certification had been a cornerstone of the Labour Relations Act from 1950 to 1995. At that time, an anti-union-driven government took office and pushed labour relations back to the 1930s. There is some indication that the minister recognizes the imbalance, but yet this bill stops short of addressing the problem.

At first sight, Bill 144 dismayed those of us seeking to represent the retail, nursing home, credit union, call centre and public sector workers. The deeper we looked, the more we felt that this bill is cynical and discriminatory. Most of the above occupations are filled by women and new Canadians, and yet the bill only extends card-based certification to mostly white male, highly paid construction workers.

In the minister's statement to the Legislature on November 3, 2004, he claims the construction sector is "unique" because they are "characterized by workplaces that change constantly and a workforce that's both very mobile and can change size constantly."

Personally, I'll never forget the experience I had while organizing a call centre in Sarnia. A woman, who was a single mother, wanted to sign a union card, but was terrified of the repercussions, so she had asked me to come to her house at 3 a.m. Once I arrived and explained to her that there was still a vote after the process of signing the card, her hands were literally shaking while she signed the union card.

While we don't deny the uniqueness of the construction sector, we submit that extending card certification to them alone and not to the most vulnerable must be viewed as discriminatory. That is our problem. When we attempt to organize a retail outlet or a call centre where the employees are mostly women and/or new Canadians, we will show you a workplace that is constantly changing, a workforce that is very mobile and that can change constantly. Where does this leave the minister's argument?

Again, from the minister's November 3, 2004 statement to the Legislature: "The government's role during a certification or de-certification campaign is not to favour one side or the other but to ensure that the choice made is an effective, informed choice and, to the extent possible,

free of undue pressure.” Lofty sentiments indeed, but without access to card certification with and a five-day delay between filing for certification and the vote, the vast majority of Ontario’s most vulnerable workers will be denied access to representation. Why? Because in today’s reality, only a very few employers live up to the sentiments that the minister proclaims. There is, as a matter of course in most cases, an active anti-union campaign put on by employers. In fact, we can predict all the tactics of an employer, which include increasing coercion, threats and intimidation until the employer, in most cases, can subvert the vote.

We know the people we are trying to organize, and we know that many vote results do not represent their wishes.

The government’s problem is how to make the discrimination in Bill 144 appear otherwise—a tall order indeed.

Let’s be clear: With the new direction the government is taking with Bill 144, we will not support nor stand by while there is an attempt to discriminate against women and new Canadians. The construction sector is highly organized, highly paid and predominantly male. There is simply no justification for this course of action. Labour peace and building trust and confidence in government can only be solved by extending card certification across the province in all sectors. End the discrimination; end the problems.

I thank you and I would like my sister Carrie to take an opportunity for you to hear her story.

Ms. Carrie Robinson: I will just very quickly address the comments of two of the past speakers.

I too am a practising Christian and I know that a fundamental belief of any church or religion is to ensure that the most vulnerable in our society have a voice and that their needs are addressed. Bill 144, as it stands, does not give working women a voice; it does not address their needs. We are vulnerable.

I need to tell you briefly where I come from to help you understand why I’m here today to implore that you extend Bill 144 to include women in Ontario and, in fact, all unorganized workers. You see, I know, as a woman, what it feels like to go to work each day, not knowing if it was the day they were going to fire me. And it was not because I was not a hard worker and it was not because I was not a good worker. I did a good job for my employer day in and day out. They wanted to fire me because a supervisor didn’t like me.

As a woman, I know what it feels like to not make enough money to feed myself and my son, even though I was working full time. I would go days without eating so there would be enough food on the table for my son. As a woman, I know what it feels like to work Monday to Friday and then Saturday and then Sunday, working two jobs to try and give a better life for myself and my son. But then I also know, as a woman and as a mother, what it feels like to never see my child—to only see my child to say goodnight, because I was always working. As a woman, I know what it feels like to not have enough

money to even buy bus tickets to get to work. So I would walk five miles to work and five miles home, often not having eaten that day. I know, as a woman, what it feels like to be sexually harassed in my workplace and have my supervisors turn their backs on the harassment.

Sadly, as a woman, I know that my story is not unique or special. I know that there are thousands of other women in Ontario who have the same struggles day in and day out that I had and the same obstacles. They still have them. Many of them actually have much more horrific stories than I do.

I was very fortunate to eventually work in a unionized workplace, and as a result, my working life and my family life changed dramatically for the better. As a woman, I then had job security, better wages and, most importantly, I had a workplace free from harassment. I could go into work and feel safe and comfortable when I went to work.

If you only extend Bill 144 to a select group of people—white male construction workers—you are sending a clear message to the unorganized women in Ontario that they don’t matter, that their families don’t matter. You are telling them that they don’t deserve the same opportunity as a white male construction worker to organize their workplace and possibly have the benefits of a better working life and, subsequently, a better family life. You are telling them that because they are women, the bar that the white male construction workers have to meet to be unionized will be set so high for women that in most cases women will not be able to jump over that bar.

Statistics show that women make up 52% of our workforce in Ontario. Women have fought so hard and so long to be treated as equal human beings in our workplaces and in society. You are the leaders of our society and you need to lead by example. I’m asking you here today to do the right thing, the fair thing and the humane thing.

1130

My 73-year-old mother is here with me today, and she tells me of a time when her signature did not mean enough by itself to buy a car or to buy a house or to buy anything of large value. I’m asking you, don’t take a discriminatory, sexist step backward to a time my mother talks of. Take a fair and equitable step forward and show the working women in Ontario that they deserve the same opportunity as men. Extend Bill 144 to include all women and in fact all unorganized workers in Ontario.

The Chair: Thank you for your presentation.

SHEET METAL WORKERS’ INTERNATIONAL ASSOCIATION

The Chair: The next presentation is from the Ontario Pipe Trades Council. Please have a seat.

Mr. Chris McLaughlin: My name’s Chris McLaughlin, and I’m with the Sheet Metal Workers’ International Association, actually. I’m taking over Mark’s spot; he

was on earlier. I want to thank you, Mr. Chair, and the members for the opportunity to speak.

I stand here in favour of Bill 144, but I agree with many others that it doesn't go far enough; it should cover all workers.

I want to go back to a time about 10 years ago, when I was a fifth-year apprentice. I was working non-union. I had been with the same company through my whole apprenticeship. I was just engaged and ready to get married. Everything seemed to be going well, until we got a letter one day in our paycheques from the employer, saying that there were financial problems within the company and we were all taking a \$3-an-hour pay cut, which didn't go over very well with anybody. So the guys started talking. I had some friends in the sheet metal workers' union, so I contacted them. They said to speak to a guy and I started talking to some of the guys at work. I was actually scheduled to go to school that fall, and my employer told me to defer my schooling because we were too busy. But after the union talk, I got laid off, two weeks before I was going to be married. My fiancée wasn't too happy at the time, but we got through it.

A couple of months later, I got a job with another company. It was actually for about \$6 an hour less than what I was used to; I had worked the previous five and a half years to ascertain a good living. An organizing drive started there, which I was in support of as well. I helped spread the word and get guys to sign cards. I was active. I got laid off there. I was reinstated, only to come back to a very cold workplace. We had been working out of town, about an hour's drive from Kitchener. Typically, all the guys were put into a van, sitting on milk crates, and you'd go to the job. But when I was brought back—they were told they had to hire me back—I had to start taking my own vehicle, only to find out when I got there that nobody wanted to talk to me. I ended up having insulation glue put all over my car and my tires were flattened. It was not a nice situation.

I just wanted to speak about the intimidation, the fear factor. In this particular drive, about 80% to 85% of the guys had signed cards, but by the day they had the vote, it went through by just over 50%. When you have that many people who were interested and then they see what the employer can start to do to you, it's definitely a chilling effect.

Interim reinstatement is a must, and remedial certification should be brought back as well.

I now am an organizer within the union, and I've seen what happens to guys when they're centred out. When there's a drive going on, the employer does his best to find out who's involved. They're pretty smart in the way they go about things now, especially in the construction industry, because our work fluctuates; it goes from place to place. It's very easy to lay a guy off and say, "We've got a work shortage right now," and then just hire other people in a couple of weeks. You have no recourse. It really hurts when you're working to try to help somebody—another person like me, with a family and children—and you can't help them. It's terrible.

Thank you.

The Chair: Thank you. Any other comments?

Mr. James Moffat: Yes. My name's James Moffat. I'm with the Ontario Sheet Metal Workers' and Roofers' Conference. I never had an opportunity to make a few remarks when we did our presentation.

I've been a trade unionist since I joined our local union in Toronto in 1969. I've been actively involved in protecting workers and representing members since that time. When the Tory government got elected in 1995 and introduced Bill 7—I think it took them 10 days to ram that bill through—they literally decimated the trade union movement and wiped out 50 years of history that had been in place until that time. In 1998 they introduced the workplace democracy bill, another bill that took away a lot of the rights of workers in this province.

There have been comments made with respect to why the construction industry has got this card-based system and why it was not extended to workers across the province. As we alluded to earlier, the Ontario Sheet Metal Workers' and Roofers' Conference is in support of extending these rights to all workers in the province of Ontario.

I was glad to see the tail end of Mike Harris and Ernie Eves when they left. It was the people of Ontario who defeated that government and elected this government. I understand how the political process works down at Queen's Park; I spend a lot of time down there. I've listened to Peter, and rightfully so. It's very difficult for the NDP to vote in favour of this legislation if it doesn't extend to all workers. I can understand that.

I can appreciate the Liberal caucus members as well. They have made a step in the right direction toward restoring some sort of balance in labour laws in this province. I commend them for that. I would hope they would rethink it and extend it to all workers. If the caucus members sitting here could bring that message back to the Premier and to the minister, it would be well appreciated by all of us here.

As far as the Tories are concerned, their message is always the same. They support the business community. We all work for businesses. We all work for employers. However, it was quite clear during the Common Sense Revolution that they didn't want the unions to have a say and the power they think we have.

Anyhow, with that, I thank you very much for allowing us to do this presentation.

The Chair: There's time for one question. Mr. Flynn, one minute maximum, please.

Mr. Flynn: Thank you very much for that summary. You really hit the nail on the head about the position that all parties may find themselves in on this bill, given the history of labour legislation in this province.

You were fired twice for organizing, and you were reinstated once. I didn't get the years that you were fired, and who was in power and what labour legislation—

Mr. McLaughlin: It was right when Bill 7 was just starting to go through and be talked about. It was in 1995.

The first time I was let go was in the summer of 1995, and then again around September or October of 1995.

Mr. Flynn: For asserting a right, you were fired as a result of legislation that came from Bill 7.

Mr. McLaughlin: I was reinstated at that time. I was brought back before, because our counsel from the sheet metal workers, Jerry Raso, had me reinstated under the provision. I don't think the bill—

Mr. Flynn: I'm trying to ascertain which labour legislation was in place that allowed that to happen to you.

Mrs. Witmer: Bill 40.

Mr. McLaughlin: Bill 40 was in place then, I guess. Sorry, it's going back a few years.

Mr. Flynn: That's what I'm trying to do; I'm trying to get a feel for that.

The Chair: That's all the time we have. Thank you again for your presentation.

1140

BOB SMITH

The Chair: We'll move on to the next presentation: Bob Smith. Mr. Smith, you have 10 minutes. You can start whenever you're ready.

Mr. Bob Smith: I would first like to thank this committee for granting me the opportunity to speak before them. I'd like to point out that I too am a Christian. Hearing some of the others speak, I would point out that there are many different beliefs among Christians. One member spoke of what the Pope had quoted. Not all Christians would have regard for what the Pope quoted in terms of labour. This community here in Kitchener has a large Mennonite community, which wouldn't speak here. As citizens of the country, I feel they should have every right to be recognized, as everyone else.

The concern that brings me here today is the exclusion of any allowance for conscience in Bill 144. I'm married with children. I own a small business in this province and seek to raise my family according to the scriptures. I cannot, according to my beliefs, put myself in any association with persons of a different faith. This would include things such as group pension plans, group insurance plans, ownership of shares in publicly traded companies, trade associations and trade unions.

I point this out to make it clear that I'm not pointing a finger at the unions and saying that they are the problem in this case. The difficulty with Bill 144 is that power is given to an unelected and unaccountable body, where it doesn't belong. The power belongs in the hands of the government, the government that was elected by the people of this province.

It's been a long time since I was in Queen's Park, at the opening of a session of Parliament, but the last time I was there, scripture was read before any other procedure. I think this points out that the government of this province should at least recognize that there are persons who live strictly in accord with these same scriptures.

These persons believe that the rights of God must be recognized above all else.

The rights of God must be recognized above all else, and then there are the rights and freedoms that belong to every Canadian, the rights and freedoms that this country is universally known for, the rights and freedoms that my ancestors fought for in both world wars. The Charter of Rights and Freedoms states that every Canadian has the right to freedom of religion and also freedom of association. This also can be translated as disassociation, which means I have the constitutional right to refuse to belong to a union.

The idea behind changing an existing law is to make it better for the citizens of the province. These proposed changes will make it easier for union officials to force their plans on unsuspecting workers and business owners and, at the same time, completely disregard the rights of everyone who does not want to have any part in it. If an employer does something that the Ontario Labour Relations Board interprets as an unfair labour practice, this bill would give them the power to impose a union on a workplace without any vote, even where the employees have voted against unionization. A small business owner who is not an expert in labour laws could end up with an imposed union that neither he nor his employees want.

As it's currently written, Bill 144 removes the right to a secret ballot on whether the workplace becomes unionized. Perhaps it could be explained to me why the members of Parliament, selected by the people of this province in a secret ballot vote, are stripping away the right to a secret ballot in regard to how we earn a living. All citizens have a democratic right to choose if they want to belong to a union or not. Why is this government taking away democratic rights? I respect government as a terror to evil works, but they can't place their responsibility in the hands of an unelected body.

This is not a union issue; it's a human rights issue. This is an issue that involves the Charter of Rights and Freedoms. It is imperative that some amendments are made for the conscience of the Brethren and many other religious groups and persons who reside in this province. We must make laws that are clear and easy to understand so that decisions are not left up to a partisan labour board that is not accountable to the people for the decisions they make.

I would like to relate an experience of a business acquaintance who had a manufacturing facility and employed about 12 people. He was doing a job that had to be installed in an airport. He was told he could not have his men install the job because they were non-union workers, so he hired three union installers. As management, he personally explained to the installers what had to be done and helped them get started. Soon after he left the job site, a union representative came by and suggested they hold a vote to certify the company that had just employed them. As they were the only employees on the job at the time, the vote was 100% in favour of unionization. The rest of the employees were unanimous about not having a union in the shop, but they were not

present at the vote, so they were out luck. The last I heard of this case, it was still in court. This type of practice is not at all fair and hardly what we could call democratic.

In closing, I would like to make some recommendations to the committee for amendments to Bill 144:

(1) That if an employer has a conscientious objection, he is not required to join any organization of employers.

(2) That a representative of a trade union is not allowed to enter a business premises if the employer has a conscientious objection to unionization.

The Chair: Thank you for comments, sir. Mrs. Witmer, any questions? About a minute.

Mrs. Witmer: Thank you very much, Mr. Smith. What two changes are you asking for to the legislation, just so I'm clear?

Mr. Smith: Just that in my workplace, if a union representative comes and wants to talk to my workers, he doesn't have allowance to enter because I have a conscientious objection that, because of my beliefs, I cannot have a union in my workplace.

Mrs. Witmer: So you're looking for that. Was there another part as well that you were looking for?

Mr. Smith: Again, that I'm not required to join any organization of employers.

Mrs. Witmer: So you want some sort of conscientious objection clause, similar to what we've been asked for this morning?

Mr. Smith: That's correct. I just know that even in this community here in Kitchener-Waterloo, which you are from—is that correct?

Mrs. Witmer: Yes. I live in this community.

Mr. Smith: You would know there are a lot of Mennonites, and they won't appear here. I know they hold the same thing as me.

Mrs. Witmer: Thank you very much for your presentation.

The Chair: Ms. Wynne, one last question.

Ms. Wynne: Mr. Smith, a number of Brethren have appeared before us, as you know. My understanding is that many of you have owned businesses in the province for some time. My confusion is that your businesses had run under a system that had many of the provisions in this bill until 1995, and the provisions will be in place again. So I don't understand why there is a problem now, when there hasn't been a problem for years. What's new?

Mr. Smith: Well, if a union representative went to my workers' homes and got them to sign a card, if I were in the construction industry, my business would be forced to be unionized.

Ms. Wynne: I'm having a hard time understanding—before 1995, before the Tories changed the rules, there were businesses run by Brethren in the province. Now we're putting back many of the protections that were in place before 1995. So what's different now than—

Mr. Smith: There was never a conscientious—

Ms. Wynne: So you've always wanted this protection for employers, is that right?

Mr. Smith: That's correct.

Ms. Wynne: OK. Thank you.

The Chair: Thanks very much for your presentation.

OPEN SHOP CONTRACTORS ASSOCIATION

The Chair: We'll move to the next presentation, Open Shop Contractors Association, Mark Baseggio. Nice seeing you again today, Mr. Baseggio.

Mr. Mark Baseggio: Good afternoon, and thank you for this opportunity to speak again before the committee. I'm here today on behalf of local businesses in the Kitchener-Waterloo area. I'll get right into it.

The Open Shop Contractors Association now represents contractors from all over the province. We've grown to be the only credible voice for the some 70% of construction employers whose employees have chosen to remain un-unionized. In fact, some of our members even do hold collective bargaining agreements with trade unions but do not believe that tendering should be restricted on that basis.

As we have only a short time to present our views, we'll now get into our thoughts on the bill.

1150

The bill concerns the Open Shop Contractors in three major ways: card-based certification; the definition of "non-construction employer," which Mr. Smith actually mentioned at the end of his presentation; and another very important one is, who gets counted?

It is important to note that much commentary has been heard by this committee on the value of organized labour's contribution toward social programs and policy, both in Ontario and Canada and abroad. While we admire these contributions, they have no place in the context of these consultations. These values are admirable. However, what is truly in question is simple: Are employees' real wishes being accurately reflected by the labour laws of Ontario?

This is precisely why the Open Shop Contractors Association has stated that the powers of interim remedies and remedial certification are fair and in fact positive additions to the act. If an employer intimidates employees, then he or she must face the consequences. However, we feel these powers have been added without adequate clarity, leaving a large grey area and potential for them to be abused. As stated by the minister himself, we must strive for balance. In that effort, we ask the committee to pay special attention and explicitly outline when and how these powers should be used.

Now to address the crux of our issues with Bill 144.

The first one is card-based certification, as I mentioned. The minister has justified the addition of card-based certification to the construction industry by asserting that it is required due to transient workforces. Transient employees are actually much more typical of unionized contractors that hire out via union hiring halls. Open Shop employers actually tend to have much more stable workforces.

The second argument for card-based certification is centred around the fact that for approximately 40 years it worked. Quoting the minister, from an earlier meeting that our association had with him, "Buildings still went

up.” Well, the simple fact is that times change. What worked over 50 years ago doesn’t work today, and the climate of employee-employer relations certainly has changed. Stating that “buildings went up” says nothing to the issue of an employee’s true desire to be part of a union, and that is what we’re talking about here.

Taking the vote away from employees in the construction sector will do nothing to ensure less harassment or a more accurate representation of their wishes. In fact, we know that employees use cards to avoid harassment from union officials, relying on the vote to put forward their true intent in an unfettered manner.

Reverting to this system of certification in the construction sector will not only lead to less accurate representation of employees’ true wishes but also reintroduce litigation caused by counter-petitions and then counter-counter-petitions introduced by unions. The costs of this litigation will unfortunately be placed on the back of Ontario small business owners, with employees being the unfortunate bystanders of flawed legislation.

Next, I’d like to speak about the “non-construction employer” definition. When the government introduced Bill 144, it was branded as a balancing of labour relations. If the bill truly did introduce a balance, it wouldn’t have ignored several critical issues, the first of these being the definition of “non-construction employer.” Twice before, the Legislature of this province has amended the Labour Relations Act to remove school boards, municipalities, banks and retailers from the construction section of this act. For the most part, employers who had become caught up in what is best described as a technical loophole of the act have been successful in terminating bargaining rights with construction trade unions where they clearly do not belong. However, the labour board has so narrowly interpreted the current definition of a “non-construction employer” that two unfortunate municipalities and several employers remain locked into these agreements. They need your help.

It is unfair that public work is not biddable by all qualified contractors. It is in fact a charter violation, showing favour to those who have chosen to associate with one group—the freedom of association also guarantees the freedom not to associate—not to mention that it also costs tens of millions of dollars because municipalities are often unable to achieve competition in tendering processes.

The second of these oversights is the definition of a bargaining unit. If, for example, a contractor normally employs 100 employees but operates a skeleton crew of, say, three people on a weekend, holiday or other day, and the union decides to file an application on that day, these three individuals decide the fate of the entire 100-person workforce. This process is obviously flawed and can best be described as ludicrous. If the act were to truly introduce balance, amendments must be made to fix this problem. I hope we can all agree that an employee having no say is something that no one wants.

In closing, we’ve heard comments and strong indications coming from the minister’s office that many of

these changes will not be implemented, that the bill will stay largely the same. It just feels like these proceedings have been a big charade, if that is the case. We hope this committee will put forward some positive changes to the bill and will listen to these sincere concerns from all our members and also the Coalition for Democratic Labour Relations, which presented some very good amendments to this bill. Thank you very much.

The Chair: Thank you. Mr. Kormos, up to one minute.

Mr. Kormos: Thank you kindly. You can tell your principals that you’ve done an effective and articulate job of representing their interests. I’m not afraid to say that, and you can report back in that regard.

However, clearly you don’t believe that card signing is a legitimate way of determining an individual worker’s real interest in belonging to a union, and that’s what the Tories advocate as well. I presume that the Liberals disagree with you. I presume that they believe that a card signed demonstrates a legitimate, real interest on the part of a worker to join a union. My question to you is, why wouldn’t they extend that right to all workers if it’s, from their perspective, a legitimate way of a worker demonstrating their interest in belonging to a union?

Mr. Baseggio: I’d like to turn that question back to the Liberals, because I have no way of knowing what the Liberals are thinking.

Mr. Flynn: May be I can help you in that regard.

Mr. Baseggio: Yes.

Mr. Flynn: I don’t think these proceedings are a charade. I think we are listening; certainly I’m listening. There’s starting to be a clear pattern in the proceedings. There are people or organizations coming forward and saying that the proposed legislation goes way too far in favouring business. There are those coming forward, like you—well, I’m thinking you—saying that it’s going way too far in favouring labour. Then there are people coming forward saying, “It’s a good piece of legislation. It’s not all we want, but it’s an excellent start.” Where would you put yourself? Is it going so far that the bill’s not supportable?

Mr. Baseggio: If these changes are not put into the bill, we would like to see the bill defeated.

The Chair: Ms. Witmer?

Mrs. Witmer: Thank you very much for your presentation, Mr. Baseggio. I guess you’ve made it pretty clear that you cannot accept the bill as it is. Are you saying that all the issues you spoke about would have to be either withdrawn from the bill or amended?

Mr. Baseggio: We would like to see them amended to reflect our opinions. Even with such an issue as the 55%: If the bill does go forward, 55% is far too low.

The Chair: Thank you very much for your presentation.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair: The last presentation before break is from the Ontario Public Service Employees Union, Local 228,

Eduardo Almeida. Please have a seat. You can start any time you're ready.

Mr. Eduardo Almeida: Thank you for the opportunity to recommend serious changes to Bill 144. My name is Eduardo Almeida. I am a correctional officer at the Hamilton-Wentworth Detention Centre, and I sit on OPSEU's executive board.

I want to speak about a few sections of the bill that OPSEU and many others have pointed out as grossly deficient. I'll address these concerns through the many years of service I have in correctional services.

The front-line public sector workers I represent truly hope the committee appreciates the shortcomings in this legislation. We hope you are prepared to craft the necessary fairness so that when Bill 144 passes there will not be two or three different classes of workers in this province.

First, a few comments on the amendments in Bill 144 that extend card certification provisions under the Labour Relations Act exclusively to the building trades.

If signing up 55% of all non-management employees is insufficient to be granted collective bargaining rights, what level of support would truly represent a majority interest in unionizing? Is it 65%? Is it 75%? Has any government caucus ever achieved this level of support before assuming all the powers of the state?

1200

Bill 144 offers card certification rights to one class of mainly male workers but denies the same right to thousands of women in public sector transfer payment agencies and elsewhere. This is hardly the progressive and equitable change that the Liberal caucus campaigned on. OPSEU urges the government not to engage in blatant discrimination. Don't base our rights to organize or to reorganize a union on the cutbacks in rights made by the previous government. Instead, as a guide, use the previous 50 years of hard-won reforms to the act.

Reinstate and extend card certification universally. This will help rebuild Ontario and will result in safer workplaces and more stable public services.

There is another way in which Bill 144 would regretfully reinforce different classes of rights in different workplaces. The bill contains no amendments to the Colleges Collective Bargaining Act. Change to this act is badly needed to remove the discriminatory exclusion of part-time staff from the two province-wide college bargaining units. Discrimination against Ontario's part-time college staff is unique in Canada. In no other province are they so vulnerable, with poor working conditions, no job security and lower wages, despite doing the same work as their full-time co-workers in both the support staff and faculty workforces. OPSEU urges the committee to take this opportunity to put an end to long-standing statutory discrimination against the thousands of part-time college workers who help students to succeed.

A third area of discrimination that Bill 144 should address is discrimination against the government's own workforce. Bill 144 fails to reinstate successor rights to crown employees. Because of this, our negotiated collec-

tive agreement does not survive when government services are privatized. We urge the government not to enshrine in law this part of Mike Harris's assault on public employees. OPSEU and other crown employees had successor rights for over 20 years. It emerged in 1974 under a Conservative government. It prevailed through the life of subsequent Tory, Liberal and NDP mandates.

Let me remind committee members of two things Premier McGuinty said to those of us in the public service. First, while in opposition he said, "I will restore successor rights to crown employees.... [They] should have the same rights as those in the private sector."

Mr. Kormos: I remember that.

Mr. Almeida: I remember too, Brother.

Later, on election night in October 2003, he said, "I have a special message I want to send to Ontario public servants. I value your work. I look forward to working with you so we can provide better service to our public."

We had reason to believe both of these messages. But with Bill 144 and the deep staff cuts now emerging, here's what the Premier appears to have really meant: "I may value your work, or at least some of it. But I plan to see it done more cheaply by the for-profit sector, preferably by employees who have no union to represent them." That is what is before us in Bill 144, if amendments are not forthcoming.

You'll notice that I referred a minute ago to the right to reorganize a union. OPSEU is perhaps unique among Ontario unions. We have no successor rights in the Crown Employees Collective Bargaining Act. We bear the burden of repeated, lengthy and expensive efforts to reorganize former public service employees whenever services are off-loaded to the private sector. These reorganizing efforts entail a card-signing campaign, setting of demands, and lengthy and often bitter negotiations. All this has to happen to get back for our members what they had and what has been taken away from them. This is the case wherever divestments cause our contracts to disappear. Every such reorganization campaign is actively resisted by profit-driven employers. In the absence of successor rights, every such campaign to regain our rights leads to chaotic labour relations and detracts from the quality of vital public services.

Take Ontario's divested young offender facilities as one example. The Syl Apps Youth Centre in Oakville is a secure facility where 150 skilled staff care for and supervise young offenders. These public employees lost their OPS contract when the centre was divested from the public service in 2001. With no successor rights, what happened at this 80-bed facility that houses disturbed and sometimes violent young offenders? Two bitter strikes in four years, one lasting over seven months. The new employer cut staffing levels, imposed wage cuts and threatened and intimidated its employees, who were exercising their right to unionize.

This is the hostile labour relations reality that characterizes young offender facilities across Ontario that have been divested. Staff turnover rates are often deplor-

able. There are too many compromises in the proper care, supervision and community safety that professional public service workers deliver.

This is no way to operate Ontario's public services. The young people in YO facilities, who need care, are the ones who suffer most when labour relations chaos prevails and when the public interest comes second to the private sector's bottom line.

If successor rights for the public service are re-established, as with card certification, we can start to return to less confrontational labour relations. An important step toward equity will be taken if part-time college employees are no longer banned from the right to bargain collectively.

So I urge the committee to address these obvious forms of discrimination. Take the time to reshape Bill 144. If you do, you'll be helping to rebuild a more equitable and prosperous province. Thank you for your time.

The Chair: Thank you for your presentation. We have about three minutes left for questions. I'll start with Mr. Flynn; one minute.

Mr. Flynn: Thank you, sir, for your presentation. It was very clear. I understood it well. And I know Syl Apps very well, it being in my riding.

You've suffered through—well, you haven't suffered. That would be a mean way of putting it. You've had experience with all three parties, obviously, in the past decade in labour legislation. You've had such things as the social contract. You've had Bill 7 to deal with. Now you're dealing with us. We're putting forth some legislation that hasn't got everything you want but has a lot of what you want. Is it still the message from OPSEU that this legislation should not be supported? You're clearly saying that you prefer to see card-based certification, but are you saying that if that's not in there, then you turn down the remedial certification and the interim reinstatement as well?

Mr. Almeida: I believe what we're saying is that it needs to be tweaked.

The Chair: Ms. Witmer?

Mrs. Witmer: Thank you very much, Mr. Almeida. I really appreciate your coming forward and expressing the views of those individuals you represent.

Mr. Almeida: Thank you, Ms. Witmer.

The Chair: Mr. Kormos?

Mr. Kormos: Thank you, Sister and Brothers, for coming. Listen, you don't begrudge building trades card cert, do you?

Mr. Almeida: No, I don't.

Mr. Kormos: And you don't treat with disdain this modest restoration of the rights that labour won, for instance, under Bill 40 with the New Democrats?

Mr. Almeida: No.

Mr. Kormos: It's a far cry from Bill 40 though, ain't it?

Mr. Almeida: Yes, it is.

Mr. Kormos: Look at you. I'm hard-pressed to think that some boss goon is going to intimidate you or, quite frankly, some of my building trades brothers over there,

but think about the Chinese woman, five foot tall, doesn't speak English too well. Think about the woman from the Sudan, a new Canadian, or the South Asian or the Sri Lankan woman who's got goons intimidating her. If somebody comes on to you like that, you'd probably knock them out.

Mr. Almeida: I think I would coerce them out of that thought.

Mr. Kormos: You see, the folks we're talking about are the ones who aren't getting card-based certification. Those are the folks for whom that kind of intimidation is going to continue to work.

Mr. Almeida: Yes.

The Chair: Thank you very much again for your presentation. The time is over.

We are going to break, but before we break, there are a couple of things to clear up. Ms. Witmer, please.

Mrs. Witmer: Chair, I'm a little concerned, and I want to get my concerns on the record. I have very much appreciated hearing the different views that have been expressed on Bill 144. That's why we're gathered here, so we can respectfully listen, and hopefully it will influence people to make changes to legislation.

I will tell you, as an MPP, I am very concerned that this committee, which is an extension of the government of the province of Ontario, was not able to guarantee an environment this morning that was totally provided for free speech and, I believe, was not totally free of some belittlement and intimidation. I hope we will make every effort in the future to protect the right of all individuals to appear before this committee and that they will not have to fear belittlement or intimidation.

The Chair: Thank you. I'm going to hear the three sides, and then I'll make my own comments. Mr. Kormos and then Mr. Flynn. If we can keep it short, please.

Mr. Kormos: Chair, you're entitled to make comments, I suppose, as is Ms. Witmer. I simply want to say that you, as Chair, have conducted this committee through what has been, from time to time, a contentious community in this room this morning. Look, there are passions around this issue, but I'm saying to you that you utilized discretion from time to time that in fact contained those passions rather than inflaming them or aggravating them. I appreciate Ms. Witmer's concerns, but I say to you that I think you handled a difficult situation in an exemplary way. And that's coming from me, so take that for what it's worth.

The Chair: It's doubly appreciated.

Mr. Flynn: Thank you, Mr. Chair. I know you were put in a tough spot this morning, but I would like to say that people in the province of Ontario, regardless of what they feel about labour issues, should have the right to come forward and make their case to the government without fear of intimidation. That's got to be made clear. We've all been talking about the threat of intimidation, from both sides, in this legislation. I think you handled it well, sir. What I'm saying is that a person should be able to come before that microphone, whether they be pro or

con or neutral on the issue, and state that case without being verbally harassed by either side.

The Chair: First of all, let me say that I thank you for raising the issue, because I also had a little concern. I certainly appreciated what Mr. Kormos said, and also what Mr. Flynn said.

At the end of the day, there are people who feel very strongly about what we're discussing, and in my humble opinion, they overreacted. I tried to contain it, and I think we did. At the beginning, it started to worry me, but by the end, we were able to limit it to one comment. I appreciate, though, that some people may have left the meeting feeling uncomfortable, and that's not fair.

I think we all agree that we are discussing intimidation—that's what Mr. Flynn said—and we should respect the others before the others should respect us. If we can keep that in my mind, I think we would do a better job.

Nonetheless, I think we heard the comments and I think we can bring those comments to Queen's Park, where we should. But I do thank you for raising the issue and I thank all of you for your comments.

The presentation at 1:10 has cancelled. Do we wish to come back at 1:10 instead of 1 so we can pick up another 10 minutes for lunch?

Mr. Kormos: Chair, are there any issues around timing this afternoon? This afternoon is all wrapped up?

The Chair: Yes, it is.

Mr. Kormos: If it's wrapped up, it's in the Chair's discretion as to what time we adjourn.

The Chair: Can we come back at 1:10, then? On time please.

The committee recessed from 1212 to 1310.

VICTOR ALLAN

The Chair: Good afternoon. We are going to start our afternoon session by asking Victor Allan to please come forward and make your deputation. We have 10 minutes. Our apology. We started 10 minutes later because we finished 10 minutes later before, plus our next presentation won't be coming, so we thought could borrow the first 10 minutes. Thank you for waiting; you can start any time.

Mr. Victor Allan: Good afternoon. My name is Victor Allan. I live in Perth, Ontario. I am 37 years old and husband of one wife, Jennifer, present with me, and we have four children.

Firstly, I would like to thank you for this opportunity to express my concerns and make a submission.

I am a believer in the Lord Jesus Christ and convicted of my obligation before God to live my life in accord with the Holy Scripture. I have a conscience before God disallowing me to join or in any way be involved with a union. To explain simply what this means, I draw this allusion: If you go to the store for some merchandise, your conscience would not allow you to leave without paying for it. It is the same with my conscience against union involvement. I cannot do it, and there is no other choice for me.

I have worked in the electrical trade since my high school days and have been a journeyman electrician since February 1989. The last nine years, I worked at a company in Ottawa. Early on in the time of this employment, the employees arranged for a vote to unanimously establish their desire to remain non-union. I did not participate in this.

According to reports made to me, things began to change just over one year ago. An employee approached the union business manager to ask the assistance of the union. This employee no longer works in this union and is a full-time firefighter. When approached, the union business manager requested that the employee gain 100% representation for the union. At this initial point, the business manager was informed that there was one employee who would never join a union. A campaign was then started to change the company. This at one point resulted in threats of violence that shut down a job site for the remainder of the day.

On May 17, 2004, a vote was held, which resulted in a 12 to 5 vote in favour of the union, out of 19. I did not participate in the vote. We called the OLRB and were informed that there was a provision for exemption, but that it was a long process and that it would be better to attempt a private agreement with the union. When I informed my employer of this, he immediately contacted his lawyer and was prepared to go to reasonable expense to make provision for me. His lawyer acknowledged that the act contained this provision.

However, my employer did first try to negotiate an exemption with the union rep. The union rep needed to involve others from the union for this, and I was left without an answer until the evening the employees signed on with the union, at which point I was told that the union would not make any provision for me but that they would accept an exemption if the board ruled it. This left me with no time to file an application while still working, since I was not allowed to work until an application was in place. It cost me three days of work while I completed an application. This was complicated by the fact that the union was working with an expired collective agreement and certain information required from a current agreement was not available to me.

Response to the application was filed on July 5, 2004. This masterpiece, a copy of which is submitted to you with this submission, professionally exposes the technical defects regarding the current provision for conscience in the Labour Relations Act, as it is now written.

Briefly, the argument used is that the provision in section 52 does not apply to the construction industry. Should anyone like to congratulate the author of this composition, he is Ron Lebi, of Koskie Minsky, not far from Queen's Park. I understand he served on the OLRB for over 10 years.

After incurring over \$4,000 in expenses for legal counsel and having been refused a hearing in Ottawa, I resolved it to be unfair for an individual to require a lawyer in this cause, the costs being estimated at between \$10,000 and \$30,000, and decided to attend the hearing

without one. Simply stated, under the provisions of the charter of our country, no individual should have to go through this simply to adhere to their beliefs.

A hearing was not set for my case until the union lawyer requested the case status from the board, and then it was set for December 17, 2004. This hearing I attended with my wife. It was then six months since the application was filed. Today, more than four months later, I have received no decision on the matter. I am unemployed. I am not unsympathetic with my employer for attempting to escape the situation.

And now, after all this, I am hoping to start a business of my own to provide for my family. I ask you, will I and my family again suffer these pressures and be stripped of our livelihood because the government does not administer responsible protection for conscience in a God-fearing individual?

The Ontario Labour Relations Act, 1995, is currently under careful review by the Legislative Assembly, in view of its improvement. Bill 144 addresses a large scope of the act. Included in this is an enlargement of the Labour Relations Board's authority to certify a trade union. My respectful submission is that along with this, there needs to be full protection for someone with an enlightened conscience before God that would not allow them to join a union and that the Ontario Labour Relations Board, an unelected body in whose hands this provision lies, be made suitably accountable for administering this.

Included in the fundamental freedoms of this country are the freedom of religion and the freedom of association. These freedoms are indeed acknowledged in part by section 52 of the act.

As the act is arranged at the current time, there is scope for argument as to the technical wording of this provision with regard to the construction industry, in that it is attempted to convey that the fundamental freedoms of this land as found in the charter are not respected by the Legislative Assembly in relation to the construction industry. This has resulted in undue consternation for the labour board and has retarded decisions that are critical to affected individuals.

It is not right that a trade union can be certified in two weeks, but a man with a conscience before God waits six months for a hearing with the board and then is left hanging without a decision indefinitely.

Now is the opportunity to make balanced amendment. For whatever reason, legislation is proposed that favours the unions. There is no better time politically to instate full provision for conscience before God in the Labour Relations Act. This will advance legislation in Ontario to compliance with the Charter of Rights and Freedoms.

I respectfully appeal that: (1) the religious exemption for employees be clarified as to its application equally to all trades and be expanded to reflect full provision for conscience; (2) provision for conscience before God be instated to protect business owners, as would now be my position; and (3) stipulation be placed on the OLRB as to time limits regarding hearings and decisions, to protect

individuals from the consequences of delayed administration.

I indeed appeal for these provisions, but respectfully, it cannot be denied that my experience shows the demand for them. I ask that these changes be recognized for the blessing of all Ontarians.

In closing, I again thank you for your time and interest.

The Chair: Thanks very much for your presentation. There is less than a minute. Mr. Kormos, do you have any comments?

Mr. Kormos: I appreciate your material. I'm reading it, because several other presenters have made reference to Ephesians. I'm reading, "Bondmen, obey masters according to flesh, with fear and trembling." To be fair, is that, in however simplified a way, the nugget of your perception of the relationship between a worker or a servant and his or her master?

Mr. Allan: Definitely.

Mr. Kormos: With fear and trembling?

Mr. Allan: Yes.

The Chair: Thanks very much for your presentation.

INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES

The Chair: We'll move on to the next presentation, from the International Union of Painters and Allied Trades, district council 46, Dermot Lynch. Please proceed.

Mr. Joe Russo: Good afternoon to the members of the committee. My name is Joseph Russo. I'm the general counsel with the International Union of Painters and Allied Trades. Sitting here with me is Mr. Dermot Lynch.

Our organization proudly represents over 7,000 men and women employed throughout the province of Ontario with local unions in Toronto, Hamilton, Ottawa, Kingston, Kitchener, Windsor, London, Sarnia, Sudbury and Sault Ste. Marie, as well as Thunder Bay. Our members work in both the ICI and residential sectors of the construction industry, performing work such as painting and decorating, drywall finishing, glazing, plastering and stucco, lead abatement, asbestos and mould removal, sandblasting, waterblasting and fireproofing. In addition, we represent many industrial units, where our members perform work such as sign designing and building, glass, skylight, curtain wall and aluminum storefront fabrication, as well as door and window frame fabrication.

Our membership has a proud and dignified history in the province of Ontario. Our membership clearly and closely mirrors the multicultural diversity of the citizens of this province. Our members speak English, French, Italian, Chinese, Japanese, Portuguese, Croatian, Spanish, Vietnamese, Polish, Turkish, Korean, Russian, Urdu, Somali and Punjabi, as well as several other languages, and we are here today to speak in support of Bill 144.

1320

Ever since the former Conservative government amended the Ontario Labour Relations Act, the number

of employees successfully organized in this province has dropped dramatically. In 1994-95, the Ontario Labour Relations Board certified trade unions to represent 32,116 employees in Ontario. In 2002-03, that number dropped to 13,708 employees, a whopping 57% decline. The reason for the decline is abundantly clear: The Conservative amendments to the province's labour laws swung the labour law pendulum unfairly to the side of management. Passage of Bill 144 is essential to return a fair and balanced approach to labour relations in this province.

A key component of Bill 144 is the return of card-based certification as an option in the construction industry. I believe that the reason that the card-based certification option was limited to the construction industry under Bill 144 is that the construction industry is unique.

First of all, the Labour Relations Act itself has over 40 sections that relate only to the construction industry. Secondly, construction workers are mobile. They move from project to project and from employer to employer. They are employment nomads, if you will, who basically follow the work. Thirdly, construction projects, and thus employment in the construction industry, are time-sensitive. An employee may be working on smaller construction projects for only a matter of days, which means that he or she may only be employed by that employer for a matter of days. This contrasts significantly with our industrial members, who typically work at the same plant for the same employer for a number of years.

Some have argued that limiting card-based certification to the construction industry is discriminatory. This simply is not true. As I have stated, our membership is as culturally diverse as the citizens of this province. Our union proudly accepts members free of discrimination on any ground. Our members include those who are black, Native Canadian, Latin American, Middle Eastern, Chinese, Japanese, southeast Asian and European. In addition, we also have 43 female members working in construction, particularly in the painting, decorating and drywall finishing trades, and I'm pleased to report that more and more women are inquiring about joining our trades as apprentices. As a matter of fact, currently, in our Toronto painting apprenticeship class, 20% of the students enrolled are female. In addition, we also have members who work with disabilities, such as those who are hearing-impaired.

Although we do not feel limiting card-based certification to the construction industry is discriminatory, we would be in favour of expanding it beyond the construction industry so that industrial and other workers of this province could benefit from the fairness that this option would return to the certification process.

Bill 144 also returns remedial certification in cases where the true wishes of employees regarding union certification can no longer be determined. This amendment is absolutely crucial. The vast majority of our organizing drives over the past 10 years were defeated due to unfair labour practices committed by employers during our organizing drives.

In our own experience, we have had employees who were fired for supporting the union prior to the date of the certification. We had one employer threaten workers by saying, "Vote no or you go." We routinely had employers threaten workers' jobs or threaten that they would shut down operations if the union was successful in certifying the company. Although such threats are illegal, they were commonplace under the current legislation, as the penalties for committing such unfair labour practices were simply not effective. The only way to stop unscrupulous employers from making such threats while workers attempt to exercise their legal right to join a trade union is to make it clear to them that if they break the law, the union will be certified, period.

One amendment which we feel should be made to Bill 144 is to clearly disallow for the filing of any petitions which purport to express change-of-heart employee wishes after the certification application date. Although Bill 144 does not expressly allow such petitions to be filed, it doesn't ban them either. So long as they are not expressly banned, it will no doubt be argued that such petitions should be allowed and that they should be considered by the Ontario Labour Relations Board. Not only could this potentially delay the certification process, it will undoubtedly be used by some employers to try to force employees to sign petitions to indicate that they no longer support the union after the certification application has been filed. This simply should not be allowed, as the determination of union support should be made at the date of the application.

In closing, Bill 144 is essential in order to return a fair balance to the construction industry. However, we feel it should be amended to allow card-based certification to be available to all workers in this province and to disallow petitions to be filed after the certification application.

Again, we support this bill and thank you for your time today.

The Chair: We have three more minutes. Mr. Flynn.

Mr. Flynn: Thank you for the presentation. I enjoyed it. I thought it was very balanced. If you hadn't said it, I was going to raise it at some point, but thank you for pointing out the 43 women who have made the courageous move into non-traditional work for women and are working in the construction trades. I wanted to point that out.

Also, you have raised something that no one else has raised to date, and that is card-based certification as an option in the construction industry. That would mean that at some point in time card-based certification may not be the way you would want to go.

Mr. Russo: Absolutely.

Mr. Flynn: Could you expand on that a little?

Mr. Russo: It's presented as an option right now. In other words, the construction unions have the option of going under the current legislation, which is the vote-based system, or going under the card-based system. I believe that under the card-based system you would have to have a greater number of support in order to apply for that option. If the number of support is not there, we

would still go under the vote procedure. It is solely an option. I don't even know if we're going to do it. I think the way we are going to approach it is, we will try the card-based certification on some points to see how it works, and if we find that it's working successfully, we will continue to do it. If it doesn't, we always have the other option of returning to the vote system.

Mr. Kormos: Thank you, both of you, Brothers. But you're eager to see this option restored?

Mr. Russo: Absolutely.

Mr. Kormos: Because Bill 7, of course, stripped it away.

Mr. Russo: Absolutely.

Mr. Kormos: I appreciate that you talk about the peripatetic nature of workers in the trades, but you're not suggesting that somehow signing a card is of any less value in terms of the legitimacy of that worker's commitment to the union than his or her vote, are you?

Mr. Russo: Absolutely not. I would say that signing the card—to me, once a worker signs a card, that's a legitimate vow, if you will, that they do want to be represented by a union.

Mr. Kormos: Look, I understand the building trades' enthusiasm about the bill. They'd be damned fools not to want the bill passed. Let's not kid ourselves.

Mr. Russo: Absolutely.

Mr. Kormos: But I think you've been very honest and frank and clear, and in your last comment—do you agree that card-based certification is important for all other workers as well?

Mr. Russo: I would say that it is. I think it is something that was there prior to the amendments that were made.

Mr. Kormos: Hell, it was there since Leslie Frost.

Mr. Russo: It was there since the 1950s.

Mr. Kormos: He weren't no radical.

Mr. Russo: It was the 1950s as far as I'm aware. I can only see that it was taken out was because of an agenda of the former government. I'd like to see it returned. I mean we're a construction union. We're happy as hell to see it in construction. We also think it's unfair that other—

Mr. Kormos: Now both of us have offended some people in the room.

The Chair: Thanks very much for your presentation.

Mr. Russo: Sorry about that.

DON LEWIS
ANDREW STEEN

The Chair: The next presentation is from Don Lewis.

Mr. Don Lewis: I would like, first of all, to thank the members of this committee for allowing me a few minutes of their time to listen to my views as a small business owner. My name is Don Lewis, and I live in London.

Eight years ago, my brother Ben and I started our own light manufacturing business here in Ontario. We feel it is only right and a matter of principle that we seek to

operate our business in accord with the laws of this province. Having said this, the reason for submitting to the laws of the land are clearly based on scripture: that government is given of God.

It is with great urgency that I have come today to voice my concerns as to the proposed Bill 144. It is my simple appeal at this time to ask this government for a clear-cut provision for my conscience to be included in an amendment to this bill. As a believer in our Lord Jesus Christ, and a member of a worldwide fellowship known as Brethren, I'm not free to be linked with any association that I do not partake of the Lord's Supper with.

As an employer, I have a very great responsibility to fulfill my righteous requirements before God. This also is supported by scripture, "Masters, give to bondmen what is just and fair, knowing that ye also have a Master in the heavens." That's Colossians 4:1. As an employer, all I am asking for is a provision for my conscience, namely, that I will not be forced to enter into a collective agreement with any third party, such as a union, and that the Labour Relations Act would not allow an unelected body to impose a union on my company, which would be against my God-given conscience.

Is this not a country that has flourished under democracy? Have not our freedoms been protected and upheld by the Canadian Charter of Rights and Freedoms? Could it truly be said that Bill 144 allows for an employer's freedom of conscience? Does Bill 144 allow for a democratic vote?

1330

I would appeal to you that it be made more clear that the government of Ontario really cares for all of its working people.

At this time, I would like to introduce an employee of mine, Andrew Steen, who felt compelled to voice his concerns. Thank you.

Mr. Andrew Steen: To begin with, I would like to thank this committee for their time and for providing us this opportunity to speak.

I am Andrew Steen, and as a member of the universal gathering of believers known as Brethren and in obedience to my God-given conscience, I cannot and will not be joined in any association of persons with whom I do not partake of the Lord's supper. This includes, but is not limited to, labour unions.

I have worked as a shop employee for Don and his brother Ben for almost six years now. I can say that in that time I have never had a legitimate complaint against the way I have been treated or paid. The unions' two most common points raised concerning employees welfare are health and safety and wages and benefits.

Firstly, in my employment for Don, I have been provided by the company with numerous safety programs. These include forklift training, propane handling training, WHMIS training and other machine-specific, hands-on training, as required to operate all of our equipment safely. To sum this up, I have always felt safe at work and would have no hesitation to bring any questions concerning safety directly to my employers.

Secondly, in regard to wages and benefits, I feel that I am paid more than fairly for the work I do. The feeling I get is that if I work hard for this company, they are willing to reward me for it. What more, really, can any reasonable person ask for?

I am sure that this committee is now well aware of our position and what we are seeking in the way of an amendment to Bill 144. We are seeking a strengthening of section 52 as it relates to employees and the addition of a provision for exemption from union participation for employers on the basis of a conscientious objection. We feel that not only is this a reasonable request, it really is a right that is already established under the Canadian Charter of Rights and Freedoms.

The reason that I have related my past work experience to you is very simple: I am presenting myself as living proof to you that in allowing for employers to be union-exempt, you are not compromising the safety or welfare of employees.

I feel that it is important for the members of all political parties present to be comfortable with this fact, and in view of gaining the support of all members of Legislature, who I understand will vote on any amendments suggested by this committee, I suggest that the employers who are eligible for union exemption based on a conscientious objection be limited to those of small businesses. This limitation of business size is in view of presenting a reasonable request that all members of the Legislature would be willing to support. It also reflects that the relationship between employers and employees of small businesses are often more informal and friendly than those of huge corporations. This alone lends itself to better working relationships between the two parties.

One very important fact to keep in mind when considering our request for an amendment is that for us, either as an employee or as an employer, entering into a collective agreement is not an option. If our business was certified by a union for any reason, I would have to quit my job, and Don, as my employer, would have to close his business. In the light of this, I would ask you as members of this committee to view our request for an amendment as a reasonable request. I would simply ask all members present that, although you may not agree with our position on this issue, please recognize it as a legitimate recognition of conscience that is held as such by many active, productive and legal residents of this province.

Again, thank you for your time. It has been an honour to speak before this committee.

The Chair: There are a few minutes left. Mr. Kormos, you may wish to—

Mr. Kormos: Thank you, gentlemen. I'm wondering, though, if the research officer could provide us some of the case law around section 52, which has been referred to by these participants and by the previous participant, Mr. Allan.

The Chair: We'll record it.

Mr. Flynn?

Mr. Flynn: Thank you for the presentation. I don't pretend to know anything about the Brethren, but it's

always fascinating, you always learn things. Would you be allowed to work for me, as a Roman Catholic? If I wanted a house built, could you build it for me?

Mr. Lewis: Certainly.

Mr. Flynn: Could you hire me, as a Roman Catholic?

Mr. Lewis: Certainly.

Mr. Flynn: But I couldn't—

Mr. Lewis: Eat with me.

Mr. Flynn: I couldn't eat with you. OK.

Mr. Lewis: I don't know if that puts it any perspective.

Mr. Flynn: There's no sense in my asking you for lunch to talk this out, is there?

Mr. Lewis: No offence, if I could just—

Mr. Flynn: I'm just trying to understand this. The rules at this point in time don't allow for the exemption based on the conscience of an employer. It may be a cumbersome system. They allow for employees but not for an employer, and you're asking the government to allow that. So you have opened a business in the province of Ontario, knowing that the laws weren't suitable to your conscience, but are now asking that the laws be changed. Is it fair for me to say that?

Mr. Lewis: I don't really exactly follow your question, but—

Mr. Flynn: When you started the company, when you opened the company, you knew what the laws of the province of Ontario were. And now that you know what they are, you think, in order to accommodate your conscience, that the laws should be changed?

Mr. Lewis: I wasn't aware at the time of starting the business that a union could come in.

Mr. Flynn: This isn't a trick question, by the way. I'm not trying to trip you up here. I just want to understand it.

Mr. Lewis: I guess that all I can say is that my convictions haven't changed any. We just seek to go on faith that something will be provided.

The Chair: Thanks very much, sir, for your presentation. Thanks to both of you.

UNITED FOOD AND COMMERCIAL WORKERS

The Chair: We'll move to the presentation, which has been changed. It will be the United Food and Commercial Workers. Are they present? That replaces the South Central Ontario Area Council of Steelworkers. Good afternoon. You may start any time you're ready, sir.

Mr. Andrew Mackenzie: Good afternoon. Thank you very much for giving me time here. My name is Andrew Mackenzie. I'm an organizer with the United Food and Commercial Workers Canada. I'm also the organizer who's heading up our efforts to organize the most anti-union employer in North America, a company called Wal-Mart. I do want to focus a bit on that specifically.

First of all, we are against this legislation for the obvious reason: the lack of card-check certification for all workers in this province, especially for those who are in

the most vulnerable positions and easiest to intimidate—women, minorities, young people. You know what? That's the general makeup of your employees at a Wal-Mart store.

The Charter of Rights and Freedoms protects the worker's right to freedom of association, yet we turn a blind eye to employers who will do everything in their power to deny them that right. I just want to quickly read you a little something. This is taken out of "Labour Relations and You" at the Wal-Mart distribution centre: "Staying union-free is a full-time commitment. Unless union prevention is a goal equal to other objectives within an organization, the goal will not usually be attained. The commitment to remain union-free" also has a price. "Unless each member of management is willing to spend the necessary time, effort, energy and money, it will not be accomplished. The time involved is a day in, day out, 365-days-per-year application of the union-free standards and the obligations and responsibilities imposed upon the management team."

So don't get yourselves wrong, folks. In a Wal-Mart store, one of management's number one jobs and responsibilities is to ensure that the union is crushed at the first step, and the first time they hear wind of it. It's one of the managers' number one responsibilities.

Wal-Mart will even take the next step. You're all familiar with a store in Jonquière, Quebec, where workers exercised their legal right to join a union. When the labour commission in Quebec announced that they were sending that first contract off to binding arbitration, guaranteeing those workers in that store a first collective agreement, what was Wal-Mart's response? "Let's close the store and put those workers out of work. Not only that, let's inform"—the original statement announcing that they have to now consider closing that store was put in the pay envelope of every single one of the 60,000 workers of Wal-Mart across this country, an implicit threat to every worker that if you try to exercise your right to join a union, this is what's going to happen to you.

Which brings us to the week of a vote: I just went through a week of a vote at a Wal-Mart store, and I need a lot more than 10 minutes to tell you what goes on.

1340

Intimidation and harassment: Wal-Mart has been found guilty four times in the last three years in different provincial jurisdictions for intimidating and harassing its workers during their organizing campaign. In the week of a vote, they will have as many managers in that store from Bentonville, Arkansas, and everywhere across the country, so that on a night shift, you almost have a manager for every single employee who's working in that store. They walk around the store all day long: "How are you today, Andrew? How's your job today, Andrew? How are things going?" That manager walks away, and five minutes later, a different manager is up asking me questions. It goes on all week.

Strangers show up out of the blue to start an anti-union committee. All of a sudden, petitions and buttons and all

these things that cost money show up in the workplace. Workers who may be favourable to the union—all of a sudden one person finds themselves doing the job of four, or all of a sudden you're taken off your night shift and put on another shift. Or if you dare to cross an aisle to talk to a co-worker, you're coached. That's what they call discipline.

I want to make this point, because this all happens in the week of a vote, folks. Some will say, "Well, we'll provide remedial actions so that if the employer does all these things, we can automatically certify the workplace." That happened at this Windsor store before. After a vote was lost because of the employer's intimidation and harassment, the labour board used its remedial actions to certify that store. But you know what? That didn't stop the employer's activities. The anti-union group continued.

In fact—and it's a case before the board now—an employee received a fax machine at home with instructions on what to do when the union was holding meetings. An employee received envelopes in her mailbox with cash to get buses and stuff to take people to meetings, to ensure that the union never got its first collective agreement. Even with those remedial actions, that case dragged on for close to three years, with all the unfair labour practice charges and everything else, and finally the workers or the anti-union group get their way and a decertification petition is put in place.

And you know what? Sometimes, it even makes you question your own government, because in this case, when the Premier's office of the day decided they needed some people to be the poster people for their legislation to strip away the remedial powers under the act, they knew where to call. They knew to call this Windsor Wal-Mart store and they knew to ask directly for the women who led the anti-union campaign. In fact, they paid their way down—flights and hotel accommodations—to be at their press conference, to proudly display that they fully support workers and companies who want to thwart the union from getting into the workplace. In fact, these folks submitted receipts for their meals, their travel and their taxi chits, in the neighbourhood of \$100. Each of them received a cheque in excess of five times the receipts they had submitted to the government. It makes you think how deep Wal-Mart's pockets go. They got the government to change the legislation. We all know it as the Wal-Mart amendment, yet we even find out that they're giving these folks money. I really think a public inquiry should be called.

Card check is the only fair way to let workers exercise their rights, free of intimidation and harassment. The week of the vote creates chaos in the workplace. It creates confrontation in the workplace. You would eliminate the vast majority of unfair labour practice charges that are a result of organizing campaigns if you got rid of that week of the vote and gave workers card check certification. We're calling on that. We're calling on fairness for all workers.

The last point I want to make on this is that there is another thing missing, and I'm going to skip off my Wal-

Mart rant for a moment. There is a whole group of workers in this province who are denied the right to have a union, and those are agricultural workers. They're working in big mushroom farms and big greenhouses. These aren't family farms, people. Some of them have in excess of 300 workers working in those workplaces, getting injured on the job, getting cheated out of the benefits and wages they deserve. They deserve the right of union representation, and the day has come to give it to them. Quit making us go to the courts to fight on their behalf. Give them the right they deserve. Thank you very much.

The Chair: Mr. Flynn, one minute, please.

Mr. Flynn: I just want to thank you for the presentation. We've met before, as you reminded me today. I knew I'd seen your face before, and the message remains the same.

Mr. Kormos: Look, we know that the building trades didn't persuade the government not to include Wal-Mart workers in the card-based certification. They didn't. The building trades, to the final union here, have said they believe card-based certification should exist for all workers. What are they supposed to do, reject it? They're not going to cut off their nose to spite their face. So what are you suggesting? Are you suggesting that this Liberal McGuinty government is as susceptible to the influence of Wal-Mart and similar bad bosses as the Tories were?

Mr. Mackenzie: I've been a union organizer for over 12 years now. I would just have to say that I would always be concerned. These are the most vulnerable workers, in some cases, out there. These are sometimes low-educated workers; there aren't a great number of jobs and abilities for them to get. Sometimes people have to get a job at a Wal-Mart. These are workers who, probably more than ever, need the ability to have union representation. I would just have to question why you would ignore these workers and give those same rights to other workers. That raises questions to me.

The Chair: Thank you very much for your presentation.

DAVE CHURCH

The Chair: We'll move on to the next presentation. Is Dave Church here? You have up to 10 minutes, sir. You can start any time you're ready.

Mr. Dave Church: My name is Dave Church, as you've already heard. I'm a business owner employing nine people. I know you've heard many presentations on this subject already, so I'll keep this one short.

I'd like to begin by thanking this committee for the privilege of speaking today. I suppose we really must be thankful that we live in a country that recognizes many freedoms, including thought, belief, opinion, religion and conscience; a country founded upon principles that recognize the supremacy of God and the rule of law; a country that gives us the freedom of peaceful assembly and the freedom of association—or disassociation. I added that bit. It's the freedom of conscience and asso-

ciation that I would like to speak about today. I feel that these freedoms will be seriously compromised by the proposed Bill 144 amendments.

I am a believer in the Lord Jesus Christ. I enjoy the Lord's supper, also known as communion, every week. I believe that the Bible is God's great moral book for man. This book tells me not to be unequally yoked with unbelievers. That's 2 Corinthians 6:14. It tells me to give what is just and fair to my employees. That's Colossians 4:1.

My conscience will not allow me to go against 2 Corinthians 6:14, keeping me from joining any federation of business bureaus or trade associations, including trade unions. It keeps me from including myself in mutual funds, shares in public companies, group insurance or medical plans. I also believe that, knowing I also have a master in heaven, I must give my employees what is just and fair, so that they should never have a need for a trade union.

Therefore, as you can see, to continue as a believer in the Lord, Jesus, I feel that this Bill 144 must at the very least have a provision for conscience that would give conscientious objector exemption to both employees and employers such as me in a conclusive way.

If the Ministry of Labour were to impose a union on my business for any reason, I would be forced to choose between closing my business, therefore losing my livelihood, or going against my conscience and my family, as well as my Brethren. I can assure you that I will choose the first. I therefore appeal to you at the very least to amend or support an amendment giving conscientious objector rights similar to those found in Australia, New Zealand and Great Britain to both employees and employers.

1350

I would also like to read from scripture, because it came up earlier—you asked a question about it. As to fear and trembling, it says, "Bondmen, obey masters according to flesh with fear and trembling in the simplicity of your heart, as to Christ, not with eye service." Further down it says, "And, masters, do the same things towards them, giving up threatening, knowing that both their and your Master is in heaven, and there is no acceptance of persons with him." I just thought I'd clarify that.

The Chair: Thank you. A couple of minutes each. Mr. Kormos.

Mr. Kormos: I suppose one of the distinctions of exemption from membership in a union is that you are one of many, whereas there's one boss or employer. In that regard, perhaps legislative research could provide us with some information on these references to Britain, Australia and New Zealand. Are those the three jurisdictions?

Mr. Church: That's right.

Mr. Kormos: I'd appreciate seeing those references, and would appreciate your interpretation of "bondsmen." The other reference in Mr. Allan's submission was in Revelations, where they talk about bondsmen and free-

men. Presumably bondsmen are different from freemen, so help me in terms of bondsmen. How would you interpret "bondsmen" in contemporary language?

Mr. Church: Hopefully, we're far beyond the idea of having slaves, but I suppose that at one time, when this was written—

Mr. Kormos: That's why I asked the question. My sense is that a bondsman is a slave.

Mr. Church: And a Christian should treat them just and fair. I am applying that to my life. I have people who work for me, and people who could possibly be frightened of me because I'm the big bad boss—

Mr. Kormos: Are you?

Mr. Church: —but I treat them just and fair. If they come to me with an issue, if they need a different dust mask or anything of the sort, it's provided.

What I want is provision for conscience for an employer, as well as an employee, because I couldn't enter into a collective agreement.

Mr. Kormos: I understand that request.

Mr. John Milloy (Kitchener Centre): Thank you very much for your presentation. To follow up on Mr. Kormos's question, I'm assuming that your faith has other branches throughout the country, and I just wonder what their experiences have been with labour laws in other provinces, if this issue has come up in terms of legislation or perhaps through court cases or tribunals or such?

Mr. Church: I'm not exactly sure. I could look for that information and get it to you. We are a universal fellowship with members throughout the world. None of us anywhere would join or enter into a collective agreement with a trade union.

The idea of provision of conscience is an old one that's been fought for for a long time. I actually have a copy of a letter to George Pitman in 1948 which granted conscientious objector rights to three employees. What we want to be sure of is that it also includes employers.

Mr. Milloy: Excuse my ignorance of your faith group, but do you have employees who are not part of your faith? I was just confused, with some of the other presentations, about how that works.

Mr. Church: Yes. I also have three employees who are actually of the Mennonite faith, but I would be free to hire men and women of other faiths. I would definitely not use as a threat, as I've heard earlier, that if you join a union I will have to close the doors. But it is a fact anyway that I would have to close the doors in relation to my conscience.

Mr. Khalil Ramal (London-Fanshawe): When you talk about medical insurance, are you not allowed to be part of OHIP, for instance, which is government insurance for everyone?

Mr. Church: We are part of OHIP; it is the idea of joining myself with a group of people as being common to them as being part of a club or an organization. I wouldn't even join a gym club.

The Chair: Thank you very much for your presentation.

CARPENTERS UNION, LOCAL 785

The Chair: We'll move to the next presentation, the Carpenters Union, Local 785. Good afternoon.

Mr. Gregory McMahon: Good afternoon. My name is Gregory McMahon. Mr. O'Dwyer is not able to attend, so I came in his stead. I hope you'll accept that.

The Chair: Yes, we do.

Mr. McMahon: I'm a business representative organizer. I have been in this capacity for 18 years. I have worked across the Dominion of Canada, so I have what I would consider relevant knowledge of activities in British Columbia, Alberta, Saskatchewan, Manitoba and parts of the east coast. Unfortunately, I've never been active in Quebec.

The legislation that is being proposed, from my experience, is long overdue. The mistake that happened years ago—I call it a mistake because any reasonable man would know that the act of freely signing a card, and it is freely, is a dangerous precedent for a worker today. Each worker who looks at that card thinks about the benefits of collective bargaining, which we know is the foundation of the middle class of this country. It promotes wealth back into the economy, which pension funds do, which health care plans from unions do—the benefits to our families, notwithstanding the health care crisis in Canada. We would say that we are part of that backbone, because we provide a pool of funds through a collective bargaining process to help and aid the health of our people and of our children to come.

But signing this card is not a free act any more; it's a threat. Workers today know without a doubt that they can be left in the lurch and that unions are powerless because the act does not give legislators the power to impose the rights of workers. Companies, corporations and employers have equal powers—powers not necessarily in the charter, such as the act says, but they're there behind the screen. They are the things that are unseen. They are the unseen economic camera, which we experience in the trade union world quite often. As recently as today, before leaving my office—the reason Mr. O'Dwyer is not here is because 18 of our people were canned a week ago because they supported a union and they are known to be supporters. There's no hiding it on the job site. Sooner or later it comes out.

What happens to those people? We rush to put out the fires, to calm them, to console them. We take calls from their wives, asking, "What are we going to do, now that the job is gone?" Happily, I can report, having worked around, that we do shuffle those people. We pull them out of that fire and try to address the concerns, often to no avail. I say "to no avail," not because there's no resolving it in some sense in the future, but because by the time it gets done, the damage is done. They don't have freedom, because freedom is never really in people's minds. It is spoken of, but quite truthfully, to be honest, all freedom comes through sweat, blood and tears. In this case, these people have tears. Their cheques are no good. The employer has that power. Termination is done im-

mediately. There's nothing anyone can do. There's no provision. We can cry and we can come to you, and you will go by your legislation.

This legislation is paramount. Should you not perceive it in that light, then you do yourselves and the youth and the people in this country an injustice. This is a free country. Many wars have attested to it. Much of our society today enjoys what the past has done. One of the things in the past was to protect freedom, and this card says you freely signed. If he knows or she knows that when that's done and the boss finds out, the job is gone, the threats start and the division starts, then there's no freedom here, folks.

1400

That's why I'm here to implore you to do what you've got to do. This legislation is balanced, it is fair and it's about time that the draconian practices of the past were put under the carpet—nailed shut in some coffin and buried forever. The damage that this activity has done in the past—not here, but even in the great province of Alberta, one of the wealthiest, people live in fear. You cannot have freedom if fear rules. If there are victims and no one can address them, then you have allowed fear to permeate. Workers are scared shitless out there. They see their bosses as kings and themselves as servants, which truly means we live in an economic society. They need that paycheque, and when it's gone, they get the message about who's running the show.

You don't come to my office, but if you wish to, I will show you the names, the lists. Call them yourselves. Come and look at a piece of paper called "When the Empire Strikes Back," a right-wing piece of junk dreamed up in some Nazi mentality of control over people. I wanted to bring a copy, but my partner asked me not to. When you read this, it coaches employers on how to destroy a union, how to destroy the will for a union, how to destroy and divide people. It would make you sick. It was written years ago. We transcribed it verbatim, to the best of our ability at the time. It was a right-wing shock put on for archaic employers who still want to think that they are gods of the Earth, and they are not. They are men who have a duty to serve their employees in an honourable way, as these men said before.

I'm certainly not as righteous a man; I'm probably the best of sinners. But I do know what justice is, and I implore you: Think about this hard, not just for the building trades; there's no doubt that they are unique. They go from job to job and live from hand to mouth. They do not have a project everywhere the next day. They work for multiple employers, a revolving door. However, I believe in this for all workers. I will not stand back nor aside to say that the building trades people are racist—that garbage. Our organization represents 20,000 carpenters in this province. Women are in our organization, black people, red people, yellow people, people of all religions. But I've heard some things lately that, frankly speaking, I find detestable.

I come in Mr. O'Dwyer's stead to tell you that if you can't protect them, then put the labour law into the

criminal law and we will do it for you, because there's a major difference between evidence of criminal law and evidence of inference for a labour board. Somehow or other, the message isn't getting through to you, but it sure has to workers. There is nobody to protect them but us and you, if you make that step today. I have nothing more to say, and I thank you very much for listening to my emotions.

The Chair: Thank you. Of course, everybody has his own opinions, and this is a forum for people to express their opinions without offending other people's opinions; I think that's what we have to understand. You've used the whole 10 minutes.

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837

The Chair: The next presentation is from the Laborers' International Union of North America, Local 837. Good afternoon, Mr. Bastos. You can start at any time.

Mr. Manuel Bastos: Good afternoon. Local 837 is a local within the Laborers' International Union of North America, covering the counties of Halton, west of Highway 25, Wentworth, Niagara, Lincoln and Haldimand. We represent 3,000 members; 2,400 in the construction industry and 600 in the industrial sector. To break that down further, 2,250 are male and 750 are female, 2,400 are Caucasian and 600 are of various visible minorities, including blacks.

Beyond that, Local 837 owns and operates two nursing homes in Hamilton, known as Queens Garden and Regina Gardens, one downtown and one on the mountain, with 256 nursing home beds, employing 320 health care workers represented by a sister local of our union. Local 837 also owns or operates 640 non-profit housing units in Hamilton, Burlington and Niagara. We own and operate two banquet facilities in Hamilton and Stoney Creek. To some of you who may know them, they are Liuna Gardens, and the old train station, called Liuna Station. The capacity of these facilities is over 3,000 people per function. We also employ over 300 people at these functions. We own a sizable real estate portfolio, including our training centre. We can say that Local 837 is a very versatile local and well qualified to speak on matters of labour relations, not only from a union perspective, representing workers, but also from an employers' perspective, employing a sizable number of people.

We wish to thank the committee for providing this opportunity to comment on the proposed amendments to the Labour Relations Act contained in Bill 144. We heartily support these amendments. Most of it is written, and I'm not going to bore you by reading it.

On the card-based certification—simply to glance over and comment on that—we agree with this, construction being what construction is: mobile, multi-employer, very different from other unions. This perhaps could be adapted to other unions, but for the construction industry it's a must, and it's a must that we bring it back to what it was

in the 1940s. The idea of this is not only to bring it back, but to bring it back to the centre. With all due respect to Mr. Kormos and the NDP—the NDP did a great thing with Bill 40, and we agreed with and supported it—we believe in our mind that it was maybe a little too far to the labour relations side. The way that the Mike Harris government brought it back to the right side—there's too far a swing back and forth. We believe that this is balanced and it should be adopted.

We agree with automatic certification. There have been previous speakers who have spoken on this eloquently. However, in the second-last paragraph on page 3, I believe that these provisions for automatic certification are balanced against threatening, intimidation and coercion by the union against the employees. Intimidation and coercion can go both ways. It can be done from the top down or the bottom up; it can be done by the employer or by the union. If the union uses force, coercion or threat, then it's only fair that the union application be thrown out. We are saying that now it's balanced. If the union uses intimidation and coercion to get the favour of the workers, and the employer uses the same thing, now it's balanced. If one uses it, it's out, and if the other uses it, there's got to be a penalty. I agree with that wholeheartedly. On interim orders, I believe in them, and they follow the same parallel as automatic certification.

To conclude, Local 837 supports the amendments of the act contained in Bill 144. Through Bill 144, the government is bringing the pendulum of labour relations back to the balanced position, and the government isn't doing the clear harm to workers and labour relations created by the Mike Harris government, which swung the pendulum too far to the right. Bill 144 restores fairness and balance to labour relations in Ontario. Even though Bill 144 goes a long way to restore fairness and the balance of power in Ontario, it could go further. However, by going further, the balance of power in labour relations in Ontario might be swayed too far to the left. Local 837 encourages this committee to refer Bill 144 back to Queen's Park for third and final reading so that these important protection provisions for workers can be enacted as soon as possible.

The rest is for you to go through, so I won't bother reading it. If you have any questions—

The Chair: Thank you, Mr. Bastos. Mr. Kormos? Mr. Flynn? Peter. Ms. Wynne; then I'll come back to you, Mr. Kormos.

Mr. Kormos: We've both been pre-empted.

The Chair: You were not quick enough this time.

Ms. Wynne: It disturbs me that you're not the first person who has said that there's intimidation in these processes on both sides; it happens. I guess one of the things I'm looking for is—I understand the arguments that have been made about card certification, but is there anything we could do that would start to remove some of the intimidation, especially from the voting process? I think the provisions we're putting in place in terms of remedial certification are really important, but it is re-

active. I guess I'm wondering if you think there's anything we could do to get some of that intimidation out. It is 2005, and some of the tactics that I hear about really disturb me.

1410

Mr. Bastos: From a union point of view, it's not easy for us to intimidate. It's card-based. "Voluntarily sign it or not sign it. If you're not comfortable, think about it. We'll come back." From the other side, there's too much at stake for intimidation not to take place. We heard it. I heard it. I couldn't believe it. "If my place is unionized, I'll close the business down." That's intimidation. You heard it.

Mr. Kormos: Brother, I hear what you're saying, and you and I are going to disagree on the politics of this for the rest of our lives, I'm sure, because you're the first member of the labour movement who has spoken of Bill 40 as too far to the left. You wouldn't believe how disappointed I was when that government watered it down in concessions that it made to the corporate world. The NDP government was so nervous about appearing too radical and scaring off Bay Street, which of course was never with it in the first place. But fair enough too.

But you see, what happens is—in part of your opening comments, you said, "Well, you know, it's a good thing we have balance in the bill, because bosses can intimidate, but so can unions," but then when Ms. Wynne asked you, you were hard-pressed to come up with an example.

Mr. Bastos: Oh, I could give you an example.

Mr. Kormos: She wants to hear it. She wants names.

Mr. Bastos: There's a company—

Mr. Kormos: No, of union intimidation.

Mr. Bastos: That I've never heard of.

Mr. Kormos: Well, there you go. You've never heard of it.

Mr. Bastos: I've never seen it done.

Mr. Kormos: But you came here and said, "Just as there's intimidation by bosses, there can be..." So what's happening here?

Mr. Bastos: There's a potential that it could happen. There's the threat of union organizers threatening the worker not to sign a card. There's a potential. Where there's two human beings—

Mr. Kormos: They can't lose their job. They can't take the job away. In any event, you and I are going to disagree on this one. However, we both agree that card-based certification should be an option for workers.

Mr. Bastos: Definitely.

Mr. Kormos: End of story. If it's good enough for building trades workers, by God, it's good enough for the worker at Wal-Mart.

The Chair: Thanks very much for your presentation.

Is the Central Ontario Building Trades present? Jay Peterson? Is Jay Peterson in the room? No?

Mr. Milloy: What about the CAW?

The Chair: Well, they are pulling their presentation together, so in a few minutes.

MILLWRIGHT REGIONAL COUNCIL OF ONTARIO

The Chair: Is Millwright Regional Council of Ontario present? Would you like to make the presentation now? We'll go back to the Canadian Auto Workers after. You've got 10 minutes total to make your presentation. If there is any time left, there will be questions, potentially, or comments from the members.

Mr. Ronald Coltart: In the brochures that are being handed out, you'll find six pages in the back that will basically outline the gist of this presentation. The reason you have these lovely technicolour brochures in front of you is that I didn't think most people here would know what a millwright does. By the time you've browsed through that and the CD, you'll know what a millwright does.

Good afternoon, everyone. My name is Ronald Coltart and I am here today to speak on behalf of the Millwright Regional Council of Ontario. The Millwright Regional Council of Ontario, its eight member locals and their 3,500 members and apprentices wholeheartedly support Bill 144, the Labour Relations Statute Law Amendment Act, 2005, and we applaud the minister for taking these steps to return democracy and fairness to the certification process for the construction industry.

Who we are: The United Brotherhood of Carpenters and Joiners has had millwright members in Ontario for over 100 years. We presently have affiliated locals in the cities of Kingston, Toronto, Hamilton, Niagara Falls, Sarnia, Windsor, Sudbury and Thunder Bay, Ontario.

Today, all millwrights in Ontario who are part of the United Brotherhood of Carpenters and Joiners of America are represented by the Millwright Regional Council of Ontario. Our members are primarily construction millwrights or apprentices, with many of them having obtained secondary qualifications, such as welding certificates, or CWB-certified.

What we do: The Millwright Regional Council of Ontario supplies the Association of Millwrighting Contractors of Ontario Inc. and other contractors with the highest-skilled millwrights that can be had throughout Ontario to meet the needs of industry across this province, whether the job is at a paper mill in Thunder Bay, Ontario, or a nuclear power generating station in Darlington, Ontario. In short, we supply the millwrighting requirements for all of our signatory contractors to meet the needs of industry anywhere in Ontario, whether that requirement is in the steel mills, auto plants, chemical plants, petrochemical plants, paper mills, food industry, mining industry or for maintenance overhaul in the power generation industry.

The ability to provide highly skilled tradesmen to meet industry's requirements for the installation or maintenance of highly specialized machinery throughout Ontario can be a factor in attracting secure, well-paying industrial manufacturing jobs to our province, which will provide many well-paying jobs for the citizens of Ontario, their children and grandchildren.

Bargaining relationship: Millwrights in Ontario working in the construction sector are represented by one

provincial collective agreement which is negotiated between the Association of Millwrighting Contractors of Ontario and the Millwright Regional Council of Ontario. Our members enjoy a uniform, fair wage—one rate of pay across Ontario no matter where they're working. Our collective agreement also provides our members with one welfare plan and one pension plan. Our pension and welfare plans are managed under a joint trusteeship agreement between the Millwright Regional Council of Ontario and the Association of Millwrighting Contractors of Ontario.

Our health and welfare plans that provide for the payment of prescription drugs, health care, dental care and life insurance are paid for by hourly contributions that are deducted from the total pay package of our members who work for our signatory contractors. Payments are made monthly to the trust fund administrator.

Contributions to the millwright pension plan, which will provide our members with a retirement income, are also deducted hourly from our working members and paid into the pension plan monthly on their behalf by our signatory contractors.

The same signatory contractors who provide our members with a fair standard of living, medical coverage and retirement security also support our apprenticeship and training funds, which provide our apprentices with the best training available anywhere.

It is the signatory millwrighting contractors—who employ our members—working with our joint provincial apprenticeship committee that determine and implement all training required of our millwright apprentices.

Apprenticeship training, the lifeblood of our industry: The lifeblood of any trade is apprenticeship training and journeyman upgrading. With the exception of secondary training courses, which are scheduled as required throughout Ontario by our affiliated locals, the three eight-week periods of mandatory in-class training for all of our construction millwright apprentices are all scheduled at George Brown College in Toronto. The training is standardized and closely monitored by the director of apprenticeship.

In addition to this, there's a week-long, specialized gas turbine training course that is available to each apprentice who maintains an average mark of 70% or higher. That training course is presented at the training facility operated by the United Brotherhood of Carpenters and Joiners in Las Vegas, Nevada. The course was designed by millwright instructors of the UBC, working in co-operation with representatives of General Electric and Westinghouse to meet their specifications for a training curriculum. This training is also funded by deductions from the wage package paid by our fair contractors.

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Thus, our signatory contractors working with the Millwright Regional Council of Ontario to provide our members with employment opportunities, apprenticeship training, a fair wage package and a pension plan must then compete with the employers who pay very little, if any, of the above cost of providing Ontario with these highly skilled tradesmen.

Unionized employers in the construction industry often have to compete with employers who pay a sub-standard wage, do not provide health and welfare plans, pension plans or training funds and who misclassify apprentices by listing them as helpers and use ratios of up to nine helpers per journeyman. Many helpers are promised an apprenticeship that is never registered and thus never materializes, and many complete the required number of hours but are never provided with the opportunity to fulfill the academic requirements of an apprenticeship. As they know that the employer will never provide them with proof of hours completed, they cannot go any other place without starting over, and thus they stay working for substandard wages because it is their only security.

Thus the non-union contractor is only interested in how much per hour he can make off each worker he employs and is only concerned with underbidding our fair contractors to obtain the work while he pays a minimal amount for wages and is never concerned about providing a skilled worker for the industry.

The Chair: Thank you very much for your presentation, sir. You've used the 10 minutes. If you have something short still to say, I will allow it, but the 10 minutes have been used.

Mr. Coltart: OK. Under the Labour Relations Act, the main factor I want you to consider is that the duration of construction projects and the continual transferring of employees from one job to another make certification in the construction industry difficult to obtain. Access to workers in a plant working for a subcontractor is non-existent, for the most part.

For over 30 years, the governments in power in Ontario acknowledged the requirement of a fair and balanced approach to labour relations in the construction industry in order to provide their citizens with the democratic rights of freedom and self-organization. This approach afforded Ontario and its citizens with the opportunity to prosper and thrive.

Restoring fairness: For Ontario's economy to thrive in global competition, we must follow a path that includes the following:

We must train the highest-skilled workers possible to replace our baby boom generation, which has already begun to retire.

We must continue to provide the highest-skilled workforce possible for our growing economy so that they will be an asset to attracting industrial investment funds to Ontario, thus creating jobs for our citizens and their children.

We must provide these workers with a fair standard of living so we can attract the best and the brightest of our high school graduates into the construction apprenticeship programs and keep them working here instead of Alberta. We must provide the working conditions and opportunities so that they can work with pride and dignity in Ontario.

In short, we must create jobs for our children and grandchildren in a society where they will be proud to

work and choose their direction in life of their own will, freely and without intimidation or coercion from management or their anti-union campaign advisers.

The Chair: Thank you very much for your presentation. There is no time for questions.

CAW-CANADA

The Chair: We will be moving to the Canadian Auto Workers. Are they ready? Yes? Thank you. Good afternoon.

Ms. Tammy Heller: We just need a breath.

The Chair: OK. We could hear another presentation if you need more time.

Ms. Heller: No, it's fine. First of all, thank you to this committee for hearing us today. My name is Tammy Heller. I'm an organizer with CAW-Canada. Maureen Kirincic is also an organizer, and Maureen will be talking in regard to her campaign at Casino Niagara. Tom Rooke is also a CAW organizer and will be talking about the Toyota campaign when it took it to a vote. We have given you a video of that campaign and Toyota's presentation to its workers. I'm going to present the brief and do the summary.

I'd like to say thank you again for the opportunity to speak to you regarding our views on Bill 144. Hopefully, this brief will assist legislators in enacting a more inclusive, fairer law for the majority of Ontario workers.

We commend the ministry on its efforts to restore some of the powers to the Ontario Labour Relations Board that were previously eroded by the Harris government. This corrective effort on the part of your ministry is a step toward restoring the authority and independence that the OLRB needs in dealing with labour relations issues in a more balanced way among the many stakeholders.

Our union, CAW-Canada, represents 170,000 workers in the province of Ontario and a total of 265,000 workers in Canada. We represent workers in 16 different sectors of the economy and, aside from a few of those sectors which come under federal jurisdiction, none of the unorganized workers in the sectors we now represent would have the card-based certification option restored if this bill passes in its present form.

The process has worked for 45 years. In 1950, Ontario enacted the Labour Relations Act. The legislation permitted, and the Ontario Labour Relations Board resolutely supported, the well-established practice of card certifications, and it certified mostly on the basis of membership cards for the following 45 years.

From 1950 to 1995, subsequent Conservative, Liberal and NDP governments supported the card majority system of certification, which provided a verifiable and accurate picture of the wishes of the employers while, at the same time, it protected workers from intimidation, harassment and reprisals from employers. Where a clear majority of employees, 55%, indicated that they wished to be represented by a trade union, the OLRB would certify the union as the bargaining agent. When the num-

ber of cards was between 40% and 55%, a secret ballot vote was conducted. This established system worked well for all the parties until 1995, when the Harris government stripped away workers' rights to join a union free from employer interference.

A double standard for workers: Since Bill 7 in 1995, workers were forced to express their desire not once, but twice, to try to achieve a unionized workplace, first by signing a membership card and then by voting via secret ballot. Presently under Bill 7, the five-day period allowed from date of application to the actual vote leaves a window of opportunity for employers to intimidate and use scare tactics on its workers, which we, as organizers, see time and time again.

History has proven that a vote, after a majority of employees have already confirmed their wish to join a union, provides a period of time during which the employees become vulnerable to harassment and intimidation by the employer. This was the primary reason for card-based certification in the first place.

The CAW stands in support of the rights of the construction sector to have card-based certification. However, the exclusion of sectors covered from 1950 to 1995 is unthinkable, totally unacceptable and leaves obvious and glaring inequality between sectors.

We believe this bill is severely flawed. We cannot understand why a government would not want protection and equality for all unorganized workers. This bill ignores the fact that in many cases women, the disabled, workers of colour and the young are the most repressed under the current vote procedure. These workers, predominantly in the hospitality industry, health care and home care, are left as the most vulnerable and need the card-check certification process, a process that ensures they are secure in knowing that once they've signed a union membership card, their commitment to a union will be a positive thing and not an intimidating process.

You are the government that has the power to change the repressive Common Sense Revolution of the past to a true common sense democratic process, a process that gives workers who choose to have a union a card-check system, without the fear of facing management when they go to vote, having to vote on company property and, in most cases, voting in company meeting rooms, where workers remember the open meetings and the company threats of just a few days earlier.

We have heard that perhaps we should continue the vote process, but away from the workplace. There is no logic behind this premise, as it does not address the scare tactics, letters to workers' homes, threats of closure, intimidating videos etc., which we will address during this presentation.

1430

Company tactics: Companies will often hire firms that specialize in hard-hitting campaigns, in an effort to stop the workers from voting for a union. Companies will hold open meetings with their employees, where threats of closure are often made, directly and indirectly. Again, during the five-day election period, the employees are

deluged with company letters, leaflets and sometimes videos, designed to malign the union and undermine union support. There are also kinder tactics used as well. The employer will hold free lunches and suppers for their employees. Companies have gone as far as offering to pay mileage to employees to come and vote. Promises get made that will only be implemented if the union is defeated.

What is needed to fix Bill 144? How do you fix a biased bill that for eight years repressed workers' rights by a government that totally ignored the unions in our province, as well as its workers?

You can start by continuing with your commitment to have a kinder, more open and friendlier government to labour and to the unorganized workers in the province of Ontario, a government that would allow equality for all in their endeavours to unionize.

Your committee can make a difference by changing a regressive law into a progressive one. Don't be taken in by the corporate agenda that suggests that workers don't need unions. History shows that the vast majority of unionized workers remain unionized and don't leave their unions once certified. Let us have one scenario for all workers via card-based check. Please let the workers choose. We ask you to let workers decide in a fair system for all.

Respectfully submitted.

The Chair: Thank you. There are two minutes left, so we'll take a minute each. Mr. Kormos, do you want to start?

Mr. Kormos: Real fast, tell us what's going on down at Casino Niagara, because those workers need organizing like no group of workers ever have.

Ms. Maureen Kirincic: I'll be very quick. You've got my synopsis in the written report.

Mr. Kormos: What has been the crummy treatment of those workers by the bosses?

Ms. Kirincic: You're absolutely right. One thing, too, is that management continually threatens and harasses the workers throughout the campaign and even the day of the vote. The vote day is what I want to talk about more than anything.

What they do is that management puts their human resources and management people on the voters' list to walk in the line and go with the workers to the polls to vote. They're actually standing in the line. I objected to the vote. Management continually said that, no, their counsel told them to stay there. They stayed there throughout the whole poll. Even though we objected, the board could not do anything either.

Right after, the next day, we met with the board officers to deal with the bargaining unit challenges, and the company agrees, "Oh, yeah, they shouldn't have voted." The intimidation was done. The vote was poisoned. The atmosphere was done. This is certainly one thing I want to address. You'll see it in the documentation that I submitted supporting the campaign, about the threats of strikes.

Even now, promises during a campaign—the president's most recent letter a few weeks ago talks about, "Oh, yes. The child care promises we promise you before every campaign" to ensure they get a no vote—suddenly they can't give it to them now. But as we get closer to the vote, they'll promise them something again.

In a nutshell.

The Chair: That is 10 minutes total. Thanks very much for your presentation. Unless the gentlemen has anything to say?

Mr. Tom Rooke: No, that's all right.

The Chair: Thanks very much. Have a nice weekend.

CENTRAL ONTARIO BUILDING TRADES

The Chair: The next presentation is the Central Ontario Building Trades, Jay Peterson. Mr. Peterson, you can start any time you are ready. You have up to 10 minutes.

Mr. Jay Peterson: Mr. Chair, standing committee, I want to thank you very much for the opportunity to appear here today. My name is Jay Peterson. I'm the elected business manager/financial secretary of the Central Ontario Building Trades. We help represent over 28 local unions and 50,000 workers in the geographical area situated roughly between Oakville in the west, Trenton in the east and Parry Sound in the north.

I am a second-generation licensed sheet metal worker. My grandfather was a licensed millwright until he was killed on the job. I started my registered apprenticeship in 1982 and became a journeyperson roughly five years later.

We view Bill 144 as a good step forward, where non-represented workers may be able to truly express their desire for representation without as much fear or apprehension as they do today.

I would like to talk about some of the areas of concern to our affiliates and about the bill in more general terms.

Filing applications for certification often leads to a negative reaction by employers and, in some cases, by employees, which in turn results in unfair labour practice complaints. Under the present legislation, since the repeal of the remedial certification provisions in 1998, there have been no meaningful penalties attached to the commission of an unfair labour practice which would truly discourage an employer from engaging in such misconduct. As such, many certification applications are routinely followed by an unfair labour practice complaint, with the net result being lengthy litigation and frustration of the employees' desire for representation. This is often where the system has broken down. The proposed return of the remedial certification provisions are a good first step to restoring the effectiveness of the labour relations system.

Many of our trades are compulsory certified trades, such as my trade, sheet metal, as well as plumbing and steam fitting, electrical, millwrighting and others. We are mandated by the Trades Qualification and Apprenticeship Act, yet when organizing is taking place, the em-

ployer may flood their list of employees with non-registered apprentices or workers without licences. The labour board ignores the fact that, under the provincial legislation, there is no place on the job site for those people. The labour board, I am told by the United Association of Plumbers and Steamfitters, does not see themselves as an enforcement branch of the Ministry of Skills Development. The board therefore decided that persons who are performing work illegally, without any licence or signed contract of apprenticeship, may still be allowed to participate in the formation of a bargaining unit of compulsory certified tradespeople. This decision and those that have followed have basically allowed unlicensed and unqualified persons, and those who employ them, to defeat legitimate desires of law-abiding tradespersons for representation by a trade union. This is wrong, as both a matter of public safety and sound labour relations, and needs to be addressed.

Card-based certification: The return of card-based certification in the construction industry is a positive and important step toward the promotion of free collective bargaining. However, section 128.1 requires some revision to better accomplish its overall goals.

The Ontario Labour Relations Board and the courts have long acknowledged the importance of expedition in certification matters. Delay typically erodes union support. Where a vote is held, delay may distort the results, and, whether or not a vote is held, delay in the granting of a certificate may undermine support and frustrate a union's ability to negotiate a first collective agreement.

Bill 144's proposed 128.1 contemplates that even where trade unions opt for the card-based certification procedure, the board may nevertheless direct that a representation vote be held. In that event, votes are, generally speaking, to be held within five days of the board's determination of whether a vote should be held.

Currently, certification hearings in the construction industry often do not begin for several weeks—often months—after an application is initiated, and such hearings may drag on for years. See *Graham Bros. Construction Ltd.* 2001 OLRD No. 4224, where the applications were filed in 1999 and the "status" issues have not yet been determined.

The labour board policy that underpins the "quick vote" system cannot be accomplished by requiring a vote within five days of a board determination that itself might not be made until months or years after the certification application was filed.

Given the board's limited resources, it will be necessary to send a clear legislative signal to ensure that certification applications are handled expeditiously and, in particular, to ensure expeditious determinations as to whether or not a vote is held. Language similar to that used for the construction industry grievances—subsection 133(6), "the board shall appoint a date for and hold a hearing within 14 days"; and/or first contract applications in subsection 43(2), "The board shall consider and make its decision on an application ... within 30 days of receiving the application"—ought to be

included in section 158.1 with respect to the determination of whether or not a vote is to be held.

Evidence: The pre-1995 card-based system and the system proposed in Bill 144 both contemplate the board making determinations without a hearing as to the level on union membership support in a bargaining unit. However, unlike the pre-1995 statute, the proposed provisions would create an asymmetry in the reliability of the material placed before the board when it makes that determination. That's sheet metal language there. Bill 144 would require applicant unions to provide evidence of membership—subsection 7(13) of the current act—but only asks employers to give information as to the number of employees in proposed bargaining units.

It is well known that some employers pad the list of employees in representation matters, falsely exaggerating the number of persons in a bargaining unit to reduce the percentage levels of union membership. A requirement that trade unions provide evidence and that employers provide information in order to determine the level of union support is nothing more than an invitation to unscrupulous employers to pad the list.

Do I have much time left?

1440

The Chair: About four minutes.

Mr. Peterson: Employers should also be held to a statutory requirement to provide evidence of the number of employees in the bargaining unit in issue. This can be accomplished in two ways.

First, the list of employees provided by employers should be supported by a statutory declaration from a responsible employer's official declaring that the individuals on the list were not persons excluded by clause 1(3)(b) of the act—as managers or confidential employees—and further that they were actually employed and at work on the certification application date and that they spent a majority of their time on that date performing bargaining unit work.

Second, the employer should be required to provide other documentary evidence in support of its employee list and statutory declaration. That evidence might include employment application forms, time sheets or other records.

These changes are very important because padded lists lead to litigation, and litigation leads to delay and expense. In that event, card-based certification might lead to even slower processing of an application than at present.

I think I have more than four minutes of my presentation left, so I'm going to skip a little bit. I'm going to respectfully submit this to the clerk.

Remedial dismissal: Bill 144 contains provisions for remedial dismissal of a certification application—subsections 128.1(7) and (8). The provisions are redundant and confusing. They have no equivalent in the pre-1995 act or even the pre-1993 act. Both subsections should be removed. This section provides for dismissal of an application without a vote “on the application of an interested person,” where “the trade union or person acting on

behalf of the trade union contravenes” the act so that membership evidence “does not likely reflect the true wishes of the employees in the bargaining unit.” The language is borrowed from sections 11 and 11.1 where it was drafted to deal with circumstances under which a vote might be ordered; it is completely inappropriate for addressing circumstances under which an application might be dismissed without a vote.

I'll skip to my conclusion for the sake of time.

In conclusion, I've heard debates and positions from both sides of this discussion and would like to respond. As a trade unionist and a construction worker, I've felt uncomfortable with the card-check certification options not being available to the more needy workers of this province.

First off, for those big corporate lobbyists that say that card-check certification in other sectors will kill investment in this province, I don't buy it. If that's true, how did Ontario grow to be the economic driving province in Canada with card-check certification in place for pretty much all of the last 50 years? I think I know why: Ontario is a beautiful, bountiful province. We have universal medicare—very attractive to business. We've had, for a number of years, a low Canadian dollar—again, attractive for exporting business. We have a quality educational system and vibrant multicultural cities, although they are under economic stress. We have reliable energy, good water, good roads and a well-trained workforce, especially in the construction sector. In other words, we have a lot of positives when attracting business. Helping the lowest-wage earners, the working poor, to elevate their standard of living should hardly stop investment. We should all be concerned with the disappearing middle class and the buying power, economic activity and taxes etc. that brings to our communities. Helping people of all sectors provide better will only show up in positive, healthier and safer neighbourhoods.

Those who say that this bill is sexist and racist ought to be careful also. The face of the construction industry is the face of, in my case, Toronto. Unorganized construction workers are very often new Canadians. This has been the case over generations. Whether immigrants came from Britain, Scotland, Ireland etc., that's what the workforce looked like and that's what some of our older membership looks like today. Retirement and changing immigration patterns are quickly changing the face of our workforce.

Hispanics from Central America, Eastern Europeans as well as workers from the Indo-China area are now the new construction force emerging. Responding to their needs and helping them achieve the Canadian dream is certainly not racist.

In construction, I'd say that within the unions female workers represent only up to maybe 5% of the membership. In the unorganized workplace, I'd say that number is even less. We've been working hard to promote women and are currently in Sudbury at the Ontario Construction Secretariat's Future Building show promoting exactly that: women in the trades. We believe that

unionized construction can provide good careers with benefits and pensions etc., ideal for all workers, male or female.

It's a characteristic of society that way more males from around the world join the construction workforce. We can do little as an area council to change that. However, if the non-unionized construction worker can join a union and receive a fair wage, benefits and pension that certainly will, without a doubt, benefit all members of the family.

Female construction workers have many hurdles. Pregnancy is, unfortunately, a problem for them as there is no legislation to provide light duty to female construction workers during pregnancy up to the birth. There are benefits after, but before birth is an issue. Many women have to quit and may never come back.

In conclusion, I'm happy this government is moving forward to help the tradespeople of this province. However, please continue the effort, and don't forget our non-represented workers, who have only legislation to hang their hopes on in every sector, like service sector workers, retail workers and, for sure, agribusiness workers.

The Chair: Thank you, Mr. Peterson. You have used the 10 minutes.

The last presentation is from Northridge Electric. Is Northridge Electric present? That is the only one we have on the agenda. The reason is that the 2:40 presentation also did not materialize, so we are 15 minutes ahead.

We have two choices. I guess we should wait until they come. We are 15 minutes ahead, so we'll wait for the next 15 minutes, and then we'll make a decision.

Mr. Kormos: Can we adjourn for 15 minutes?

The Chair: We can adjourn—around here, if you don't mind.

Mrs. Witmer: Who do we have yet?

The Chair: The last one—Northridge Electric.

Mrs. Witmer: Does anybody know who it is?

Interjection: Ken Wragge.

The Chair: We didn't hear from them.

If somebody has to pick up stuff from the rooms, go ahead; otherwise, we can hang around here, and when they arrive, we'll try to hear them. Three o'clock or before is the next presentation, please.

The committee recessed from 1445 to 1459.

NORTHBRIDGE ELECTRIC

The Chair: There you are. Welcome. We knew you were trying to find a parking spot, so we were waiting for you. You can start any time you're ready.

Mr. Ken Wragge: I appreciate your patience.

The Chair: No problem. You are on time, by the way. We were just a little early. So don't feel bad about it all.

Mr. Wragge: I'm sorry to have kept you late on a Friday afternoon. I thank you for waiting and giving me a spot here.

My name is Ken Wragge, and I'm here to represent our company, Northridge Electric and, I believe, the

feelings of other small, non-union contractors and tradesmen in the province.

I entered the electrical trade over 20 years ago, served an apprenticeship, received my licence and eventually started my own business in 1997. We primarily provide electrical services to industrial and institutional customers in Ontario. Over the years, our work has brought us in touch with thousands of workers in hundreds of different workplaces. We have had a close-up view of Ontario's amazing workforce in auto parts plants, hospital operating rooms, research facilities, schools, wood product factories, gas stations, office towers, stores etc. This view has enforced the need for equitable labour legislation, as these laws, directly and indirectly, affect not only the well-being of individual workers but the province as a whole.

I, as an individual, have a Christian conscience against belonging to or being associated with a trade union. This expression of faith is not new; nor has it always received the same consideration or treatment in Ontario. Years ago, my great-grandfather was dismissed from employment 13 times because his conscience would not allow him to join a trade union. Later, my grandfather and two others were excused by the Ministry of Labour from union membership and dues on account of their conscientious objection to joining when their workplace was organized. This arrangement remained in place for 30 years until the company closed. Some of his peers in other employment were denied this right under similar circumstances.

In 1992, I spoke before a similar committee set up by the NDP government prior to their reform of Ontario's labour laws. Our message is still the same. Although we are prepared to surrender our jobs or businesses rather than compromise our conscience before God, we feel that Ontario needs to follow the lead of other jurisdictions and make a clear, indisputable provision for exemption from union membership on the basis of conscientious objection. This should provide for employers, as well as employees.

One other serious concern with regard to Bill 144 is the government's proposal to equip the Ontario Labour Relations Board with the autocratic power to impose union certification on a workplace based on their own discretionary judgment of prevailing conditions. If enacted, this would certainly be a violation of a person's freedom of association, or disassociation, which is an established charter right. This is especially true as it would be done in cases where the worker's wishes cannot be determined. This authority in the hands of unelected officials would plead to be abused, as such powers vested in the board would be enormous.

Another point specific to Bill 144 is the thought of revisiting the practice of card-based certification. This method has historically been contentious and lends itself to intimidation, influence, exposure and even violence. Secret ballots are one of the cornerstones of democracy, and every employee deserves a private say in any certification drive. The card-based system has been likened

to the recorded votes of Parliament. As the members of this committee would understand, MPPs are voting on behalf of their constituents and must be accountable to them. Employers have no such obligations.

In conclusion, I'd like to point out another Christian principle that we also seek to follow in our workplaces, and that is the relationship between masters and servants or, in our language, employers and employees. According to the Bible, masters are to render to their servants what is just and fair, and servants are to labour at their work heartily. We are firm believers in the value of harmonious labour relations.

In these submissions, we have heard labour pulling in one direction and management in the other. We have heard of labour legislation being used as a political tool, but we have not heard much about working together to achieve excellence. Ontario's manufacturing and health care sectors are at a critical crossroads. I understand that in the committee this morning we had some disruption. These are the kinds of things that are not only hurtful personally, but I think they're holding us back provincially.

In conclusion, I would suggest that the government, rather than acting on Bill 144, pursue initiatives that will encourage flexibility, education, innovation, performance rewards and investment in the workplace by stimulating true master-servant harmonies. Confrontation hurts, but in our experience, I have seen time and again that teamwork will always excel. As we work together, it will secure a bright future for Ontario in the presence of increasingly competitive global markets.

I'd like to thank the committee very much for—

The Chair: There is enough time to ask questions. About a minute and a half maximum. Ms. Witmer.

Mrs. Witmer: Thank you very much. I'm glad that you were able to get there. What are the main changes that you would like the government to make to this legislation?

Mr. Wragge: The main change we'd like to see is the insertion of a conscience clause to—

Mrs. Witmer: For both employers and employees?

Mr. Wragge: That's correct. To protect really the religious freedoms, I would say, of a small minority of workers in the province.

Mrs. Witmer: I appreciate your recognition of the fact that labour and management need to work together

on behalf of the good of everybody in the province. Thank you very much for your presentation.

Mr. Flynn: Thank you, sir, for coming today. We've had other people come before us in all the locales we've been at, and they refer to themselves as Brethren. Would you fall into that category as well?

Mr. Wragge: Yes, I do. That's correct.

Mr. Flynn: The point they have made is that should they be forced against their wishes to be associated with a trade union, as an employer they would have to close their business. Is that true in your case as well?

Mr. Wragge: Yes, that would be true. We are prepared to go to the wall.

Mr. Flynn: That's what I thought. But this is the first time I think that in any of the presentations I've seen something as specific as you've gone to on the second page, where you pass a comment on card certification. It appears to me from what you've said that the process would not reach card certification, that you would close the business before that point in time. Is that correct, or am I not reading that right?

Mr. Wragge: If I understand your question rightly, if it came right down to the wire, that our workplace was certified, we would close it at that point.

Mr. Flynn: So you would wait for it to be certified and then close it?

Mr. Wragge: We would fight it tooth and nail, I believe.

Mr. Flynn: So you wouldn't close it down before—the conscientious belief does not apply to the organizing drive?

Mr. Wragge: That's correct.

Mr. Flynn: It comes into place should the union be certified?

Mr. Wragge: Yes. We would believe that the involvement comes into place when the signatures go on the paper.

The Chair: We thank you for coming. All of you, have a good weekend. This is the last of the hearings for these three days. We thank you again, all of you.

Mr. Flynn: When is clause-by-clause?

The Chair: May 9. So it's a week from Monday.

I thank you again. Have a good ride back to your ridings.

The committee adjourned at 1507.

Continued from overleaf

Ontario Public Service Employees' Union.....	SP-1024
Mr. Eduardo Almeida	
Mr. Victor Allan	SP-1027
International Union of Painters and Allied Trades	SP-1028
Mr. Joe Russo	
Mr. Don Lewis; Mr. Andrew Steen.....	SP-1030
Mr. Andrew Mackenzie	
United Food and Commercial Workers.....	SP-1031
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Mr. Manuel Bastos	
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Mr. Jay Peterson	
Northridge Electric	SP-1042
Mr. Ken Wragge	

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Mr. Kevin Daniel Flynn (Oakville L)

Mr. Peter Kormos (Niagara Centre / Niagara-Centre ND)

Mr. John Milloy (Kitchener Centre / Kitchener-Centre L)

Mrs. Elizabeth Witmer (Kitchener-Waterloo PC)

Clerk / Greffière

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Mr. Avrum Fenson, research officer, Research and Information Services

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First Session, 38th Parliament



Assemblée législative de l'Ontario

Première session, 38^e législature

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Monday 9 May 2005

**Standing committee on
social policy**

Labour Relations Statute Law
Amendment Act, 2005

Journal des débats (Hansard)

Lundi 9 mai 2005

**Comité permanent de
la politique sociale**

Loi de 2005 modifiant des lois
concernant les relations
de travail

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 9 May 2005

Lundi 9 mai 2005

*The committee met at 1559 in committee room 1.*LABOUR RELATIONS STATUTE LAW
AMENDMENT ACT, 2005LOI DE 2005 MODIFIANT DES LOIS
CONCERNANT LES RELATIONS
DE TRAVAIL

Consideration of Bill 144, An Act to amend certain statutes relating to labour relations / Projet de loi 144, Loi modifiant des lois concernant les relations de travail.

The Chair (Mr. Mario G. Racco): The meeting can start now. Thank you all for attending. We are considering Bill 144, An Act to amend certain statutes relating to labour relations, clause by clause.

We will commence with item 1, a PC motion. Mrs. Witmer.

Mrs. Elizabeth Witmer (Kitchener–Waterloo): I move that subsection 7(7) of the Labour Relations Act, 1995, as set out in section 1 of the bill, be amended by striking out “subsections 128.1(9), (14), (19), (20) and (21).”

The Chair: Would you like to make some comments?

Mrs. Witmer: Yes. This would strike out the provision that would recognize section 128.1, where there could be an application for certification without a worker's democratic right to a secret ballot vote. We support a worker's fundamental democratic right to a secret ballot vote. We believe that it is essential in all circumstances, and we cannot support the amendment of section 128.1, because it would strip all workers in this province of their right to that secret ballot vote.

Mr. Peter Kormos (Niagara Centre): In fact, that's the concern of the NDP, in that 128.1 wouldn't give all workers the right to card-based certification, but only building trades workers. I very much wanted Ms. Witmer to explain the reasons for this amendment, because I want to very specifically indicate that New Democrats can't and won't support Ms. Witmer's amendment. We do not begrudge any worker in this province the right to join a trade union by virtue of signing a membership card. We agree with those workers from both the building trades and the industrial unions, as well as the public sector, who declared adamantly that the quality of a signed card is as good as anything when it comes to workers indicating whether or not they want to belong to a trade union.

In fact, I was impressed to the greatest extent at the view of the building trades unions—perhaps other than for one, and one only, that didn't share this view—that qualitatively a construction worker's signature is certainly not inferior to a Wal-Mart worker's signature, and that if it's good enough for construction workers—and I think it is—it's good enough for Wal-Mart workers. We heard about the incredible nature of employee intimidation and harassment, the intervention that can occur in that oh so brief period between a card campaign—signing cards—and the actual vote. Quite frankly, tinkering with the voting process—I appreciate there has been some discussion about that—doesn't address the issue.

I hear the government, in its effort to justify card-based certification for building trades only, talking about the building trades as a somewhat different type of workplace. I don't dispute that there are unique qualities to the building trades workplace. But if the issue is the quality of that worker's indication as to whether they want to join a union, then the other argument is, quite frankly, not relevant. If it's good enough for the building trades worker, it's good enough for other workers. That's why I'm going to be asking for a recorded vote on this motion. I want to be clearly opposed to denying building trades workers the right to card-based certification, but I want to make it quite clear that I am similarly opposed to denying non-building trades workers the right to card-based certification.

Mr. Kevin Daniel Flynn (Oakville): Speaking against the amendment that's been put forward this afternoon, I think we've heard the two extremes from Mrs. Witmer and from Mr. Kormos. I think what we are trying to do is achieve some balance and fairness in this. We believe that the distinct features of the construction industry mean that they should be treated differently, and that is what the bill is proposing to do. I think it is fair and balanced.

Mr. Ted Arnott (Waterloo–Wellington): There are a number of amendments before this committee this afternoon and I don't want to unduly belabour the point, but I want to remind committee members that a significant number of presenters to this committee in the discussion on Bill 144 expressed support for the idea of secret ballot votes on important union decisions. Certainly our party has had a tradition of supporting that. When we were in government in 1995, we brought forward Bill 7, which had the express purpose of ensuring that there would be a secret ballot vote. Mr. Kormos, in

his discussion, alluded to the possibility of intimidation that may take place in terms of the internal mechanics of these decisions. If you don't have a secret ballot vote, you don't have an opportunity for workers to express their preference absolutely free from intimidation.

I'm disappointed that the parliamentary assistant has indicated that the government is not supporting the motion. We haven't heard from the other four government members; perhaps they're going to consider supporting our motion. We would ask them to do so.

Mr. Kormos: In closing very promptly, I'm disappointed that the parliamentary assistant would characterize Ms. Witmer's position in this particular regard as extreme, or in fact mine. I want to say that Ms. Witmer and the Conservatives have a perspective. They have a point of view around card-based certification, and they made that clear when they presented Bill 7. They have been consistent. They wanted to remove, from every worker, card-based certification. I don't agree with that—I fundamentally disagree with them—but I understand it. It is a point of view that is legitimate in that it represents the interests of certain sectors in our society, not the sectors I necessarily want to speak for, but it is a point of view, and the Tories have been incredibly consistent in that regard. I can have regard for the Conservatives even though I fundamentally disagree.

Having said that, the New Democrats have been very consistent. In fact, we've been consistent over the term of five decades now, a consistency that was generated by Leslie Frost, maintained by John Robarts, and then by Bill Davis, Frank Miller, David Peterson and the NDP government. It's 50 years of consistency.

The Liberals somehow seem to think that if they've got one foot firmly planted with the Tories and another foot up in the air somewhere, like a dog looking for the right fencepost, that's called balance. I call it a bizarre approach to labour relations reform. At the very best, it's incrementalism, but it's incrementalism that holds out no hope for the other workers in the province. Very interesting.

The Chair: Is there any further debate?

Mr. Kormos: Recorded vote.

The Chair: I will now put the question, and it will be a recorded vote. Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The motion is lost.

Shall section 1 carry? There's no amendment.

Those in favour? Those against? Section 1 carries without amendment.

Section 1.1: Mr. Kormos, you have given notice of a motion.

Mr. Kormos: I haven't moved the motion yet. I'm seeking unanimous consent to move this motion, because it amends the Ontario Labour Relations Act and not the bill before us. Therefore, it requires unanimous consent to be put to this committee. In terms of the orderliness, and within the context of Bill 144, it is in a technical way out of order, although it has the capacity to amend the act in a legitimate way. The effect of it, of course, is to extend card-based certification to every worker in the province of Ontario. I'm seeking unanimous consent to move this amendment to the bill.

Mr. Arnott: On a point of order, Mr Chair: Is it in fact in order? Unanimous consent to the motion—

The Chair: They asked consent. It is in order. What I was going to do was give an explanation so that everybody could understand what we are doing, and then I was going to recognize Mr. Kormos, who I understood wanted to ask unanimous consent. Since he has already asked for it, I'm going to see if there is support. I don't think we should debate it. He asked for it; if there is support, then we will move on.

The request is for unanimous support. Do I hear unanimous support?

Ms. Kathleen O. Wynne (Don Valley West): I just want to be clear: Mr. Kormos is asking unanimous consent to move the motion?

The Chair: The motion that I determined not to be in order.

Ms. Wynne: Which you determined not to be in order? That's what I'm not clear about: whether this motion is in order.

The Chair: Notice of a motion was given. That motion, as I understand, is not in order. Mr. Kormos has not read the motion into the record, but we all know what it is, because it's page 2. Am I right? Therefore, the question Mr. Kormos has asked is: Is there unanimous support? If the answer is yes, then we will move on. If the answer is no, I have ruled that we move on to the next item. Does Mr. Kormos agree?

Mr. Kormos: That's correct.

The Chair: Can I then ask, is there unanimous support, yes or no? Agreed. Anybody against it?

Interjections.

The Chair: Mr. Kormos, let me do this: I want you to read the motion and then we'll see if there is unanimous consent.

1610

Mr. Kormos: With respect, Chair, the Chair is, as they say, functus with respect to that now because I've sought unanimous consent to move a motion that, in normal terms, would be out of order because it amends the act rather than the bill, and I got that unanimous consent. So if people want to defeat it now, they can defeat it. You can't revisit it, with respect.

The Chair: I appreciate that I'm not too sure everybody was clear on what was happening.

Mr. Kormos: It's not my fault. It's not your fault. It's not mine.

Ms. Wynne: It's probably my fault. I'm sorry. Procedurally, Mr Chair, if now the motion is read, you can't rule it out of order? Is that the case?

The Chair: Only if there is unanimous consent to accept.

Ms. Wynne: After it's been read into the record?

The Chair: Clerk, you had better answer that one. It's a technical question.

Mr. Kormos: I asked for unanimous consent to move an out-of-order motion—

Ms. Wynne: Before you read the motion, you asked for unanimous consent?

Mr. Kormos: Yes.

The Clerk of the Committee (Ms. Anne Stokes): Technically, Mr. Kormos was asking for unanimous consent to move the motion. He has the right to move the motion. It hasn't been ruled out of order yet, but if it's ruled out of order, he could also ask for unanimous consent that it be considered, regardless.

Ms. Wynne: Yes, but what I'm asking is, once he reads into the record, it can be ruled out of order?

The Clerk of the Committee: I'm not clear whether unanimous consent was given to the request.

Ms. Wynne: You see, I didn't hear a ruling that the motion was out of order because we didn't have a motion before us. I'd like to know, once it's read on the record, if it can then be ruled out of order, because if it is, then I don't want to have to consider it.

The Chair: What Mr. Kormos did, instead of reading the motion, he asked for unanimous consent. That's what he asked, and in fairness to him, we asked for a vote and I saw that only three people voted. The rest did not vote. Now the argument I hear is that since nobody voted against it—is that correct, though, legally?

The Clerk of the Committee: If you feel there was unanimous consent.

The Chair: I think there was a group of you who were not clear what was happening on the matter, so how could there be—

Interjection.

The Chair: But I don't know if it's wise for us to move on.

Ms. Wynne: I'm going to ask, once the motion is read, for a ruling of whether it's in order or not.

The Chair: Mr. Kormos has already asked for unanimous support, and that is what is in front of us. What he's arguing—and I have to admit I don't have the legal knowledge because I have never been faced with something like that. I don't know if he's technically or legally correct. That's why I'm asking the clerk to clarify for me whether Mr. Kormos is correct.

Ms. Wynne: He got unanimous consent to move the motion.

Mr. Kormos: Chair, if I may. I was very clear, and the record will show, that I acknowledged that the motion was not in order because it amended the root act—

The Chair: In your explanation.

Mr. Kormos: —and not the bill. That makes it technically out of order. That's why I sought unanimous con-

sent. I sought unanimous consent to move an out-of-order motion and the committee of course can give unanimous consent. It then remained, because it's no longer open to the—I acknowledge it's out of order, but that was what the agreement was for; everybody agreed. If the Tories don't want it to occur, they can vote against it.

I suggest we move on. I got unanimous consent to move an out-of-order motion. That's very clear. I didn't hide my light under a bushel. This wasn't a surprise attack.

The Chair: I certainly heard what you said, and I have to agree with you. The only concern I have is that I don't believe everybody was clear what was happening because they were waiting for a motion to be introduced.

Ms. Wynne, any other comments?

Ms. Wynne: It still seems to me that there would be an opportunity to rule it out of order, but Mr. Kormos is saying not, so unless we have contrary advice—

Mr. Kormos: I'm in your hands, Chair.

The Chair: The motion is on the floor. Mr. Kormos asked for unanimous support and he got it., Therefore, you have the floor, Mr. Kormos, and I rely on the technical assistance considering that unfortunately there was some—OK, Mr. Kormos.

Mr. Kormos: I move that the bill be amended by adding the following section:

“1.1 Section 8 of the act is repealed and the following substituted:

“Certification of trade union

“8(1) On receiving an application for certification from a trade union, the board shall determine, as of the date on which the application is made and on the basis of the information provided in the application or the accompanying information mentioned in subsection 7(13),

“(a) what constitutes the bargaining unit; and

“(b) the percentage of employees in the bargaining unit who are members of the trade union.

“Information from employer

“(2) Within two days (excluding Saturdays, Sundays and holidays) after receiving a request from the board, the employer shall provide the board with,

“(a) the names of the employees in the bargaining unit proposed in the application, as of the date on which the application is made; and

“(b) if the employer gives the board a written description of the bargaining unit that the employer proposes under subsection 7(14), the names of the employees in that proposed bargaining unit, as of the date on which the application is made.

“Other evidence and submissions

“(3) Nothing in subsection (2) prevents the board from considering evidence and submissions relating to any allegation that sections 70, 72 or 76 have been contravened or that there has been fraud or misrepresentation if the board considers it appropriate to consider the evidence and submissions in making a decision under this section.

“Response to application

“(4) Upon receiving an application for certification, the board shall,

“(a) direct that a representation vote be taken, if it is satisfied that at least 40% but not more than 55% of the employees in the bargaining unit are members of the trade union on the date on which the application is made; and

“(b) direct that a representation vote be taken or certify the trade union as the bargaining agent of the employees in the bargaining unit, if it is satisfied that more than 55% of the employees in the bargaining unit are members of the trade union on the date on which the application is made.

“Hearing

“(5) The board may hold a hearing if it considers it necessary in order to make a decision whether to certify the trade union as the bargaining agent of the employees in the bargaining unit.

“Dismissal: Insufficient membership

“(6) Subject to section 11, the board shall not certify the trade union as the bargaining agent of the employees in the bargaining unit and shall dismiss the application if it is satisfied that fewer than 40% of the employees in the bargaining unit are members of the trade union on the date on which the application is made.

“Dismissal for contravention

“(7) If the trade union or person acting on behalf of the trade union contravenes this act and, as a result, the board is satisfied that the membership evidence provided in the application for certification or in the accompanying information mentioned in subsection 7(13) does not likely reflect the true wishes of the employees in the bargaining unit, the board may, on the application of an interested person, dismiss the application if no other remedy, including a representation vote, would be sufficient to counter the effects of the contravention.

“Bar to reapplying

“(8) If the board dismisses an application for certification under subsection (7), the board shall not consider another application for certification by the trade union as the bargaining agent for any employee who was in the bargaining unit proposed in the original application until the anniversary of the date of the dismissal.

“Exception

“(9) Despite subsection (8), the board may consider an application for certification by the trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,

“(a) the position of the employee at the time that the original application was made is different from his or her position at the time that the new application is made; and

“(b) the employee would not be in the bargaining unit proposed in the new application if he or she were still occupying the original position at the time that the new application is made.

“Representation vote

“(10) If the board directs that a representation vote be taken,

“(a) the vote shall be held within five days (excluding Saturdays, Sundays and holidays) after the day on which

the board makes the direction unless the board directs otherwise;

“(b) the vote shall be by ballots cast in a manner that individuals expressing their choice cannot be identified with the choice made; and

“(c) the board may direct that one or more ballots be segregated and that the ballot box containing the ballots be sealed until the time that the board directs.

“Response to representation vote

“(11) Subject to section 11, after a representation vote, the board,

“(a) shall certify the trade union as the bargaining agent of the employees in the bargaining unit if more than 50% of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union; and

“(b) shall not certify the trade union as the bargaining agent of the employees in the bargaining unit and shall dismiss the application for certification if 50% or fewer of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union.

“Transition

“(12) This section, as it read immediately before the day on which section 1.1 of the Labour Relations Statute Law Amendment Act, 2005, came into force, continues to apply to applications for certification as bargaining agent that a trade union makes to the board before that day.”

This amendment has the effect of extending card-based certification to every worker in this province, as justice and fairness would dictate. People are familiar with the issues. I think a Wal-Mart worker's signature on a union card is as good as a building trade worker's signature and she shouldn't be treated any differently.

1620

The Chair: Thank you, Mr. Kormos. Is there any debate on the motion? There is no debate?

Mr. Kormos: Recorded vote, please.

The Chair: I will now put the question—

Mr. Arnott: Could I have an explanation for the purpose of the motion and what it does?

The Chair: Mr. Kormos, would you like to answer the question?

Mr. Arnott: Would you give us an explanation as to why you're moving this motion and what it would accomplish?

Mr. Kormos: I'm sorry; I just said that. I said it slowly, but I'll say it again. This extends card-based certification to all workers, not just those workers in the building trades, as the bill currently does. It basically restores the card-based certification regime as we knew it before Bill 7.

Ms. Wynne: I just want to be clear that the reason I didn't object to the motion being read was that I thought it was fine for it to be read in, but then it could be ruled out of order. My understanding is that this motion is outside the scope of the possibility for amendment, and so we'll not be supporting it.

The Chair: That is why I ruled the way I did, even if we didn't go through the formalities. I thank you for that.

At this point, I will now put the question.

Mr. Kormos: Recorded vote, please.

The Chair: Shall the motion carry? All those in—

Mr. Kim Craiton (Niagara Falls): Mr. Chair, I have a question.

The Chair: So we are back in debate.

Mr. Craiton: I'm curious. Let's just say it passes. What happens if it's out of order?

The Chair: Sorry?

Mr. Craiton: If it's out of order, which you said it is—

The Chair: The committee has the power to overrule.

Mr. Craiton: If it's outside the committee, then where does it go?

The Chair: If it passes, it passes. You see, I as the Chair—

Interjection: It amends the Labour Relations Act.

The Chair: It amends the amendment.

Mr. Kormos: It becomes part of the bill.

Mr. Craiton: So it does amend it.

The Chair: Yes, of course. The Chair has the power to overrule, which I was going to do. Because he asked for a vote and the majority supported—anyway, now we have to vote on the matter. It's a recorded vote.

Ayes

Kormos.

Nays

Arnott, Craiton, Flynn, Leal, Ramal, Witmer, Wynne.

The Chair: The amendment does not carry.

We will move to the next section, section 2. It's page 3, I believe. It's a motion by Ms. Witmer.

Mrs. Witmer: I move that section 11 of the Labour Relations Act, 1995, as set out in section 2 of the bill, be struck out and the following substituted:

"Remedy if contravention by employer, etc.

"11(1) Subsection (2) applies where an employer, an employers' organization or a person acting at the request of an employer or an employers' organization contravenes this act and, as a result,

"(a) the true wishes of the employees in the bargaining unit were not likely reflected in a representation vote; or

"(b) a trade union was not able to demonstrate that 40 per cent or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union at the time the application was filed.

"Power of board

"(2) In the circumstances described in clause (1)(a), on the application of the trade union, the board may,

"(a) order that another representation vote be taken and do anything to ensure that the representation vote

reflects the true wishes of the employees in the bargaining unit; or

"(b) certify the trade union as the bargaining agent of the employees in the bargaining unit that the board determines could be appropriate for collective bargaining, but only if a quorum of the board unanimously agrees that,

"(i) the contraventions mentioned in subsection (1) are egregious, as described in subsection (5), and

"(ii) no other remedy would be sufficient to counter the effects of the contraventions.

"Non-application of ss. 110(11) and (14)

"(3) Subsections 110(11) (majority) and (14) (chair or vice-chair sitting alone) do not apply to a decision under clause (2)(b).

"Power of board

"(4) In the circumstances described in clause (1)(b), on the application of the trade union, the board may,

"(a) order that a representation vote be taken; and

"(b) do anything to ensure that the representation vote reflects the true wishes of the employees in the bargaining unit, but only if the board is satisfied that the contraventions mentioned in subsection (1) are egregious, as described in subsection (7).

"Same

"(5) An order under subsection (2) or (4) may be made despite section 8.1 or subsection 10(2).

"Considerations

"(6) On an application made under this section, the board may consider,

"(a) the results of a previous representation vote; and

"(b) whether the trade union appears to have membership support adequate for the purposes of collective bargaining.

"Meaning of 'egregious'

"(7) For the purposes of subclause (2)(b)(i) and clause (4)(b), contraventions are egregious if they include or consist of,

"(a) an act or threat of physical violence against an employee or his or her relative;

"(b) termination of an employee if,

"(i) the board determines that the termination is contrary to the act, and

"(ii) the employer was aware, at the time of the termination, that the employee was authorized to act as an inside organizer on behalf of the trade union; or

"(c) a breach of an order made by the board under this section."

This amendment would ensure that the legislation very clearly reflects what the government says are its intentions, which are that the remedial or punitive certification would only—and I stress this—would only be used in the worst cases, and as a last resort. Specifically, the amendments that I have just put before you would set out the specific types of conduct that would attract remedial or punitive certification. It would also provide that a full three-member panel of the board must agree to remedial or punitive certification before it can be ordered. Thirdly, it would ensure in every case that employees are given at least one opportunity to cast a secret ballot vote free from

any pressure, and that they would be given the opportunity to express their views in a democratic manner.

The Chair: Any debate? Mr. Kormos.

Mr. Kormos: I can't support this amendment. It's far too restrictive with respect to the board's discretion around remedial certification, amongst other things. We heard enough horror stories from workers involved in union organizing efforts about the fact that Wal-Mart and other big bosses can hire lawyers until the cows come home; they've got huge resources available for that. Lawyers will weave their way through the technicalities of legislation in an effort to find means to intimidate workers. In my view, this legislation has to, when it restores remedial certification, restore it in a meaningful way. This amendment detracts from any meaningful remedial certification, along with the new element—let's understand that—of remedial decertification.

Mr. Jeff Leal (Peterborough): I would be concerned that this amendment does water down the potential remedial power that the Ontario Labour Relations Board would have, because one of the things that I take from the committee hearings is the horror stories with regard to activities surrounding the organization of bringing a union to an employer to start the very legitimate collective bargaining process in order to get a contract. The amendments that we have proposed to Bill 144 bring back a reasonable balance to labour relations in the province of Ontario, and I don't think we should step back and water down the remedial power that we believe should be put back into the framework of labour relations in Ontario. So I won't be supporting the amendment.

Mr. Arnott: I would suggest that this particular amendment is a friendly amendment to the bill because it allows government members to consider supporting it to put flesh on the bones of the commitment that they made. The government made a commitment that remedial or punitive certification would—I think the words were “would only be used as a last resort.” This ensures that in fact that commitment will be honoured, and it also ensures that a three-person panel will make a decision, which is a very important decision for any company that's being organized or any union that is attempting to organize a company. So one person on the board isn't going to be making an arbitrary decision; a full three-person panel would make that decision. I think that because of the seriousness of the decision the board would face, I think it would ensure that better decisions would be made if there were three on the panel, as opposed to the potential arbitrariness of one person making the decision. Consequently, I would support this motion.

Mr. Flynn: When you look at the policy objective of the proposed legislation, I think that what we're trying to do is to deter both employer and union misconduct during the process. It seems to me that if we were going to handcuff the hands of the board in this manner, we wouldn't be achieving that policy objective.

I also note that the amendment does not talk to union misconduct, should that occur, so in supporting the

amendment you would have a very unbalanced piece of legislation. You would have one set of rules applying to employers and a different set of rules applying to the union or the bargaining agent.

For those reasons, I won't be supporting the motion.

1630

Ms. Wynne: There's just one final comment I'd like to make. If for no other reason, the definition of “egregious” seems to me to be woefully inadequate. I think it's pretty naive to suggest that an action only becomes egregious when there's “an act or threat of physical violence.” We've heard lots of evidence that psychological or emotional violence can be done in a number of ways. So I certainly won't be supporting this amendment.

The Chair: Is there any further debate? If there is no further debate—

Mr. Kormos: Recorded vote, please.

The Chair: I will now put the question. A recorded vote. Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The amendment does not carry. Shall section 2 carry?

Mr. Kormos: Recorded vote.

The Chair: A recorded vote for section 2.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 2 carries.

Section 3, page 4.

Mrs. Witmer: This is section 3 of the bill. We recommend voting against section 3 of the bill, subsections 12(1) and (3) of the Labour Relations Act, 1995. Do you want me to read the rest?

The Chair: As you please. It's clear what you're asking. I'm just waiting to see if there is any debate.

Mrs. Witmer: I guess this is consequential, as section 3 would amend subsections 12(1) and (3), would substitute section 128.1 for other various sections and would allow for application for certification without a worker's fundamental right to a secret ballot vote. Obviously, we cannot support the initiatives of this government to strip workers of their opportunity to a secret ballot vote.

The Chair: Are there any comments on the recommendation? Any debate? Therefore, I'm going to take a vote on the section.

Mr. Arnott: Recorded vote.

The Chair: Shall section 3 carry? A recorded vote.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Carried.

The next one is page 5. Again, I have some difficulty with this section. Could I have a mover?

Mrs. Witmer: I move that the bill be amended by adding the following section:

“3.1 The act is amended by adding the following section:

“Religious objections, employer

“52.1(1) Where the board is satisfied that an employer who is an individual objects to entering into collective agreements because of his or her religious conviction or belief, the board may issue a certificate of religious objection to the employer.

“Effect of certificate

“(2) An employer who holds a certificate of religious objection is not required to join any organization of employers.

“Same

“(3) A representative of a trade union is not entitled to enter an employer’s premises to hold discussions with employees if,

“(a) the employer holds a certificate of religious objection

“(b) no more than 20 employees are employed at the premises; and

“(c) none of the employees who are employed at the premises are members of a trade union.”

The Chair: Ms. Witmer, before any comments, if I may, I believe you have read the entire motion?

Mrs. Witmer: Yes, I have.

The Chair: As you know, it is an established principle of parliamentary procedure that an amendment is out of order if it is contrary to the principle of the bill as agreed to at second reading. In an amending bill, the scope of the bill has been interpreted to mean only those sections that the ministry or sponsor has chosen to amend. Second reading of the bill establishes the parameters of the bill that may be considered by a committee. Therefore, an amendment that deals with something beyond the scope of the bill as established at second reading is out of order.

I find that this amendment seeks to add a new section to the act that is beyond the scope of this bill and its amendments to the Labour Relations Act. I therefore find this amendment out of order.

With your blessing, I’ll move to the next one. Thank you.

There is no section to be addressed here, and I guess we’ll take a vote on 3.1.

The Clerk of the Committee: We don’t need to.

The Chair: OK. We’ll go then to section 4, which would be page 6. I’m sorry, there is no amendment to that one. Therefore, shall section 4 carry?

Mr. Kormos: Hold on, I have some debate.

The Chair: On section 4? Yes, Mr. Kormos.

Mr. Kormos: Sections 4 and 5 deal with the Bill 7 provisions that provided for decertification notice. I supported the repeal of the Bill 7 provisions that provide for compulsory posting of decertification notices. Unlike the Liberals, who felt comfortable with parts of Bill 7 but not all of it, I opposed all of Bill 7. It was none of you five, because of course you weren’t here at the time, but your then colleagues in opposition embraced portions of Bill 7, and of course you maintain that tradition today with your continual denial to Wal-Mart workers of the right to card-based certification.

Look, if any of you have been in a workplace and seen the posters, they become magnets, from time to time, for some very crude anti-boss sentiments. They become a blog for disgruntled workers. These decertification notices, I’m convinced, became as much of a nuisance to the employer, because it was the central place for, “Foreman A is an ABC”—pick your choice. So I have no doubt that the vast majority of the workplaces that were unionized had no interest in putting up these darned posters anyway, because all it did was cause grief.

Of course, the corollary was—because the government was in a dilemma. I’m convinced of that, and I don’t know if the Tories agree with me on this. The government was in a dilemma because with their purported balancing act—which is easy when the rope is only two feet off the floor and there’s a net—they would have had to either repeal the decert notices or—catch this—put up certification notices.

Although the building trades think they won a victory here, the real victors are the Wal-Marts. Think about it. The real winners are the Wal-Mart bosses. The decertification notice means a lot less in a unionized workplace because unions inherently educate their workers. Are there unhappy members of unions? Of course there are. We’ve talked to them here. Heck, ask any union business agent; he or she can provide you with a long list of disgruntled union members, people who don’t feel the union has done them right on this issue or that issue, what have you. That’s not unusual. But union members are educated. They know—let me put it this way: More union members know about decertification than non-union members know about how to certify. That’s the obvious thing.

I’m convinced that the government here wasn’t persuaded by Wayne Samuelson, no matter how hard he tried, that the decert notices were silly and useless and unfair, but it was Wal-Mart that said, “No, please, before you start compelling us to put up certification notices in many languages, let’s say, we’re ready to agree that you should take down the decert notices.”

The decert notices were silly, didn’t work. I’m not aware of any decert notice resulting in a move or a drive to decertify a union. From time to time, there are decertifications of unions. I know that. I’m not trying to gild the lily or paint the lily. So I support sections 4 and 5, and will be pleased to consider the amendment by the Conservatives to section 5 when that happens.

1640

The Chair: Is there any further debate on section 4? If there is no debate on section 4, shall section 4 carry? Those in favour? Those against? Section 4 carries.

We go to section 5, page 6.

Mrs. Witmer: I move that section 63.1 of the Labour Relations Act, 1995, as set out in section 5 of the bill, be struck out and the following substituted:

“Saving

“63.1 An employer or person acting on behalf of an employer shall not be found to have initiated an application under section 63 or to have contravened this act by reason only that, after the coming into force of section 5 of the Labour Relations Statute Law Amendment Act, 2004, the employer or person continues to do anything that was required by subsection (4) of this section, as it read immediately before the coming into force of section 5 of the Labour Relations Statute Law Amendment Act, 2004.”

I believe this amendment is very important. I hope the government will give serious consideration to this one. I recognize that so far they have not given any consideration to any amendments that have been introduced. What it tries to do is ensure that, so long as the communications are not intimidating or coercive, nothing stands in the way of employees being informed about all of their legal rights under the Labour Relations Act.

Bill 144, as it is currently drafted by the government, means that an employer can be found to have violated the act if it fails to remove the how-to-decertify poster from its workplace within 30 days of the new act coming into force. Our concern is not so much that the poster be removed, but that an employer can be found to have committed an illegal act simply by informing his or her employees about their rights under the act.

For a government that prides itself on and talks a lot about democracy and the opportunity to make sure that people are informed of their rights and have the opportunity to participate, not only are they proposing to eliminate the secret ballot vote, which would take away that one right we all cherish in this country and in countries throughout the world, but they are also going to take away the right of an employer to free speech. That is certainly very concerning.

The Chair: Is there any debate?

Mr. Flynn: I think it's a little unfair to say that the amendments aren't being considered. The amendments are being considered. They aren't being supported, would be a better way of putting it, but we certainly have considered them.

This is quite reasonable, I think. What it's saying is that 30 days after the passage of the proposed legislation, all employers in the province of Ontario would be expected to have removed the decertification posters. It's a part of the history of labour legislation in this province, where something was done and it didn't really have any meaningful effect either way. It was almost like it was done to be vindictive or out of spite. It was done for some reason that I just can't understand.

Both employers and employees seem to have come forward and said that this is something that simply poisons the environment, and they don't need them. They're not doing any good; I don't know whether they're doing any harm or not. **Mr. Kormos** claims that it hasn't led to any decertification drives. I agree with him. I have no reason to believe that he's not telling the truth in that regard. So it's just an irritant that we can get rid of, and this legislation proposes to do just that. It's quite reasonable. Thirty days to take down a piece of paper is pretty reasonable, pretty generous.

Mr. Kormos: I'd invite the workers in those workplaces to facilitate the removal of those posters. I suspect there'll be lineups; there'll be lotteries. They'll have little bets going about how long the poster lasts. At what hour will that poster get the final bit of defacement or graffiti? There'll be all sorts of wonderful things happening to these posters.

Mr. Arnott: I was just thinking about what the government would say if someone said, “You can't put up the Charter of Rights and Freedoms on the wall in the school because we don't want people to know about their rights and freedoms. We don't want them to be informed of their rights and freedoms.” This is what this bill is attempting to do, to ensure that workers know about their legal rights under the law.

Why the government would be opposed to that baffles me completely. I can't understand why they would assume that everybody knows all the provisions of the Labour Relations Act, that they don't need information and that there's no need to inform them of their rights under the law. Yet, if the government members vote this down, that's exactly what they're saying.

The Chair: Any further debate? If there's none, I will now put the question.

Mrs. Witmer: Recorded vote.

The Chair: Shall the motion carry? A recorded vote.

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

I will now take a vote on section 5. Shall section 5 carry? Those in favour of section 5? Those opposed? The section carries.

Section 6. Comments?

Mr. Kormos: Very briefly. I remember when the then Minister of Labour launched this campaign about union goons, big fat union bosses and high-priced union thug-boss-leader people, women and men. First of all, the trade unionists I know vote on budgets at their annual conventions, and there's very little secret around what various members of their staff—business agents, union presidents, women and men—make.

The second observation was, when we started to see—

Mr. Flynn: Chair, on a point of order: I'm enjoying what Mr. Kormos is saying, but could you tell me what we're speaking to? Are we speaking to an amendment?

The Chair: It's section 6.

Mr. Kormos: We're speaking to a section of your bill. This is your bill, Mr. Flynn.

The Chair: Please. There was a question, and I'll be happy to answer: Section 6.

Mr. Flynn: Thank you very much.

The Chair: Mr. Kormos, you have the floor.

Mr. Kormos: I'm being very clear. Section 6 of your bill, as you know, repeals salary disclosure. I'm surprised you didn't know that, because you seem to have somehow lost the train of thought.

Mr. Flynn: I knew that. I just wasn't following you.

Mr. Kormos: Well, the other folks didn't have any problem—

The Chair: Mr. Kormos, talk to me, please. I enjoy your company in this discussion.

Mr. Kormos: Other folks didn't have any trouble at all.

What I learned, and what most people learned, is that most union presidents were making less money than some of the lawyer staff and other people who provide the real support, the real backup, for those union organizations. If anything, it's like that TV ad about putting a value on something. Buzz Hargrove, Leah Casselman and Fraser at the negotiating table—I say priceless. You're talking about some of the best and most effective negotiators in this country and in our lifetimes. If I'm a worker in a factory and I've got big corporate bosses ready to gouge me every step of the way, I want the best possible people doing my negotiating for me. I think, by and large, workers are well served by their labour leaders.

The provision to disclose sums—the government of the day thought it was going to embarrass these union leaders. It didn't. None of the union members were shocked or surprised, because they all knew anyway. Quite frankly, they have regard for the incredible talents of that union leadership.

When we were in Kitchener especially, I was impressed with Ms. Kelly, for instance, who made a submission as the executive assistant to the president of Local 6 of the Steelworkers. I was impressed by some of the young building trades leaders. Mark Ellerker, who's here today, was joined by several others. I was overjoyed at seeing bright, articulate, capable, energetic, committed, progressive trade unionists in roles of leadership in the trade union movement, both building trades, industrial and public sector. I don't begrudge them a penny of their paycheques, with their 80-hour workweeks and families who suffer the short end of the stick—if they dare risk having a family while doing that kind of work.

1650

The Chair: Is there any further debate on section 6?

Mr. Craitor: I have to make a comment. Having been on strike three times myself, I remember those days quite

clearly. I also remember the members, when I was a local president, and the frustrations we used to have when our negotiators kept getting paid but we were out there picketing. I remember blocking the traffic on the Rainbow Bridge with one of the locals I belonged to. It's kind of nice to know what they're getting, because I tell you, as a member, we didn't know. Many times we didn't know, Peter, what the executives were making.

Mr. Kormos: So you're not going to support—

Mr. Craitor: I'm just sharing with you. I didn't say anything when you spoke. There is nothing wrong with that. Anyway, I just thought I'd mention it.

The Chair: Are there any further comments? Mr. Kormos, back to you on section 6 only, please.

Mr. Kormos: I want to be very clear that section 6 repeals the mandatory disclosure of trade union leaders' salaries, so it will be interesting to see how Craitor comes down on this one. He'll demonstrate how balanced he can be: He'll vote against the section.

The Chair: Thank you all. I think we're ready for the vote.

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote. Shall section 6 carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The section carries.

We'll move to section 7. It's pages 7 and 7(a).

Mrs. Witmer: I move that section 7 of the bill be struck out and the following substituted:

"7 Section 98 of the act, as amended by the Statutes of Ontario, 1998, chapter 8, section 10, is repealed and the following substituted:

"Board power re interim orders

"98(1) On application in a pending proceeding, the board may,

"(a) make interim orders concerning procedural matters on such terms as it considers appropriate; and

"(b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate.

"Same

"(2) The board may exercise its power under clause (1)(b) only if the board determines that all of the following conditions are met:

"1. The applicant establishes that the circumstances giving rise to the pending proceeding occurred at a time when the applicant was actively in direct contact with employees of the employer in an effort to organize them and that the employer was aware of the effort.

"2. There is a serious issue to be decided in the pending proceeding.

"3. The interim relief is necessary to prevent irreparable harm.

"4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.

"Same

"(3) In its determinations under paragraphs 3 (irreparable harm) and 4 (balance of harm) of subsection (2), the board shall not consider financial harm if it could be adequately compensated after a decision on the merits in the pending proceeding.

"Same

"(4) The board shall not exercise its powers under clause (1)(b) if it appears to the board that the termination was unrelated to the exercise of rights under the act by an employee.

"Same

"(5) Despite subsection 96(5), in an application under this section, the burden of proof lies on the applicant.

"Same

"(6) With respect to the board, the power to make interim orders under this section applies instead of the power under subsection 16.1(1) of the Statutory Powers Procedure Act.

"Transition

"(7) This section applies only in respect of a termination that occurred on or after the day section 7 of the Labour Relations Statute Law Amendment Act, 2005, comes into force.

"Same

"(8) This section, as it read immediately before the day section 7 of the Labour Relations Statute Law Amendment Act, 2005, came into force, continues to apply in respect of events that occurred before that date."

What we are trying to do here—as you know, the legislation as currently written would allow the labour board to change workplace practices, terms and conditions of employment or reinstate a terminated employee before any complaint about alleged employer wrongdoing had been heard or any type of decision made. If the government is determined, as they appear to be, to expand the labour board's powers in this manner, we believe that those powers should be limited only—I stress the word "only"—to reinstating employees terminated during an active union organizing campaign, and they should be used only where the union has proven that no other remedy, including monetary compensation at the end of the hearing, will suffice.

Mr. Kormos: Again, I understand the motivation for this amendment; I don't support it. I think the restoration of meaningful powers for the board to make interim orders is important. We heard from more than one worker about how you can dismiss a worker, and that will immediately have the proverbial chilling effect on any other number of remaining workers, even if that worker, at some point down the road, is reinstated.

Wal-Mart workers are going to have a hard enough time organizing, with this government's refusal to give them card-based certification. They don't need even more hurdles put in front of them. I want to give all unorganized workers as many breaks as we can. The government, as I said, has created a huge hurdle for the Wal-Mart workers of Ontario by not giving them card-based certification. Let's give them at least a labour relations board that can create some interim orders and

get people back to work who have been fired because they've been involved with a union.

Mr. Flynn: I think the interim powers we are proposing in this case are very well balanced and very well thought out. They're already limited to cases where the board determines that a number of very specific conditions have been met. You'd have to be satisfied, for example, that the event in question occurred during an organizing campaign, that there was a serious issue to be decided by the board as a result of this event, that the interim order that would be issued was actually necessary to prevent some sort of irreparable harm or to achieve some other significant labour relations objective, and that some harm would occur as a result of not granting the order. It's very specific. The board, under the proposed legislation, has the power to respond to the misconduct, should it be deemed necessary, in a meaningful and balanced way.

The Chair: Any further debate on the motion? If there is none, I will ask for—

Mr. Arnott: Recorded vote.

The Chair: A recorded vote.

Shall the motion carry?

Ayes

Arnott, Witmer.

Nays

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

The Chair: The amendment does not carry. We'll take a vote on section 7.

Mr. Kormos: A recorded vote, please.

The Chair: A recorded vote.

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 7 carries.

Section 7.1: Mrs. Witmer, you can introduce the motion, or I can deal with it before you do so.

Mr. Flynn: Mr. Chair, on a point of order, just so we all understand the process: My understanding is that there's some question as to whether this motion is in order. I would ask you to rule on that right now so we know what we're dealing with.

The Chair: For all the members, let's go over it again. I was instructed by the clerk last motion, when we dealt with a matter, that procedure requires that the mover reads the motion into the record and then the ruling comes. That is what we tried to do earlier with Mr. Kormos, but what Mr. Kormos did, as I recall, was that

he acknowledged what I was going to do and asked—unfortunately, at that time, some people may have entered into a different discussion, and he was able to do what he did. Having said that, do you still have a question?

Mr. Flynn: Yes. Just so I understand, then, the motion will be read and you will rule whether it's in order. If you rule it's in order, we will deal with it; if you rule it's out of order, it stops.

The Chair: Exactly. But they can still ask for unanimous support. Any of you can ask. If that's the case, then the floor is again open for it.

Therefore, Mrs. Witmer, you have the floor if you choose.

Mrs. Witmer: I do. I believe every one of the amendments that we are bringing forward is extremely important. I would just say that there's a lot of concern about this legislation. It will have an impact on job creation and the economy in this province.

1700

I move that the bill be amended by adding the following section:

"7.1 Section 125 of the act is amended by adding the following clause:

"(j.1) prescribing classes of employers for the purposes of the definition of 'non-construction employer' in subsection 126(1)."

The Chair: This amendment seeks to amend a section of the Labour Relations Act that has not been opened by the amending bill, Bill 144. I therefore find this amendment out of order. With everybody's support, we'll move on to the next one. There is no vote to be taken, of course; there is no section. There is no section 7.1; there is now section 7.2. Again, I ask the mover to introduce her or his motion.

Mrs. Witmer: I move that the bill be amended by adding the following section:

"7.2 The definition of 'non-construction employer' in subsection 126(1) of the Labour Relations Act, 1995, is repealed and the following substituted:

"'non-construction employer' means,

"(a) an employer whose primary business is not in the construction sector, including without limitation a municipality, a school board, or another government organization or publicly funded organization, or

"(b) an employer belonging to a prescribed class of employers."

The explanation is that there are currently—

The Chair: Mrs. Witmer, you read the motion. Let me rule on the matter. I appreciate what you want to do, but I don't think it's possible. Basically, it's the same ruling as before. This amendment seeks to amend a section of the Labour Relations Act that has not been opened by the amending bill, Bill 144. I therefore find this amendment out of order, and there is no more discussion on the matter.

We'll move on to the next section, section 8. The floor is again yours, Mrs. Witmer, with page 10.

Mrs. Witmer: We recommend voting against section 8 of the bill, section 128.1 of Labour Relations Act, 1995.

The Chair: Thank you for your recommendation. Is there any debate on the recommendation?

Mr. Kormos: This of course is the restoration of card-based certification for workers in the building trades. By virtue of it being section 128.1, if you take a look at the Labour Relations Act, you see that commencing with section 126 of the Labour Relations Act you are dealing with the construction industry, as defined. That doesn't call for any debate around that at this point. It's a pretty well-known, pretty common accomplishment.

Folks know that I am displeased, incredibly displeased and concerned, about the denial of card-based certification to the vast majority of workers in this province. New Democrats have been clear from the get-go. We were clear when we supported card-based certification as a government. We supported it when it was introduced by Conservative governments, as CCFers, back with Leslie Frost as Premier, and by subsequent governments led by people like John Robarts, Bill Davis, Frank Miller and even David Peterson.

We fought Bill 7 tooth and nail. We did. We opposed every single element of Bill 7. There isn't a sentence, there isn't a punctuation mark in that bill that New Democrats supported. I can't speak for the Liberals in this regard, because there was a whole lot in Bill 7 that the Liberals thought was just hunky-dory, and so be it. They'll have to explain to their own grandchildren why they would have done that. But I've also been very clear that New Democrats don't begrudge any worker the right to card-based certification.

I'm going to be direct and say that I am supporting this amendment. This is an amendment to the construction industry portion of the Ontario Labour Relations Act. I'll have more to say about the whole bill, Bill 144, as we get closer to the end of it. But I'm going to be supporting the amendment which creates the new section 128.1, because New Democrats have never suggested that building trades shouldn't have card-based certification. Our position has been that everybody—every worker—should have card-based certification, because if one worker's signature is good enough for certification, by God, another worker's signature should be good enough too.

Mrs. Witmer: I think it's quite obvious that our party—and I know we speak on behalf of many individuals in the province of Ontario and certainly employers as well—is gravely concerned about the return of card-based certification and the opportunity that an employee loses to secretly make the decision whether he or she wishes to join a union.

I know it has been said, I guess by Mr. Kormos, that there is employer intimidation. Regrettably, from the phone calls, letters and e-mails that I have received, we also know that there is intimidation and there is harassment of employees as far as their being forced to sign a card. This intimidation happens outside of the workplace, in the workplace, or they are even followed to their

homes. I just find it unbelievable that this government, which continues to speak about democracy, makes a mockery of democracy and the right to a secret ballot vote for each and every employee in the province of Ontario. It's very inconsistent. I can't believe that they would think it's OK to have card-based certification for one group of people and not for the other. The whole thing leads me to ask the question, why is one group of employees being favoured and not the rest?

Mr. Kormos: On a point of order, if I may: Here we are debating section 8, and we've got three government motions and two NDP motions.

The Chair: What's on the floor for debate is the notice that Mrs. Witmer has given. Unfortunately, as usual, we tend to get into it a little longer or further. I remind all of you, if we can stick to that, then we'll deal with each section.

Properly so, the clerk has also reminded me that at the end of all this, we have an opportunity again to comment on the overall section. Maybe that's where we should keep the overall comments.

Mr. Flynn had asked to speak before Mrs. Witmer. If you wish to speak, fine; otherwise, we'll move to the next—

Mr. Flynn: I think we're trying to promote individual choice, balance and fairness in this. Somebody asked, "Why should you extend card-based certification to the construction industry? What's the reason for it?" I think if you look at things like project work, a mobile workforce, time sensitivity of jobs, that type of thing, there are some very valid reasons why you would extend card-based certification based on the distinct features the construction industry has.

The Chair: Thank you. Can we move to you again, Mr. Flynn, page 11?

Mr. Flynn: I move that subsection 128.1(1) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be struck out and the following substituted:

"Application for certification without a vote
"Election

"(1) A trade union applying for certification as bargaining agent of the employees of an employer may elect to have its application dealt with under this section rather than under section 8.

"Notice to board and employer

"(1.1) The trade union shall give written notice of the election,

"(a) to the board, on the date the trade union files the application; and

"(b) to the employer, on the date the trade union delivers a copy of the application to the employer."

If I can speak to that very briefly, this amendment would make the process under the card-based regime consistent with the vote regime and with the current OLRB practices and rules to date.

The Chair: Any debate on the amendment? I see no more debate. I will now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Page 12: Mr. Flynn again, please.

Mr. Flynn: I move that subsection 128.1(2) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by striking out "subsection (1)" and substituting "subsection (1.1)".

1710

The Chair: Any comments or further debate? If there is no debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Flynn, page 13.

Mr. Flynn: I move that subsection 128.1 of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by adding the following subsection:

"Determining bargaining unit and number of members
"(18.1) Section 128 applies with necessary modifications to determinations made under this section."

In supporting this motion, this amendment would ensure that the labour relations board can continue its current practices with respect to certification in the construction industry. It would also ensure that the board could treat card-based applications and vote-based applications in a consistent manner. They're long-standing practices.

The Chair: Any debate? If there's none, I shall now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Mr. Kormos, page 13.1.

Mr. Kormos: I move that section 128.1 of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by adding the following subsections:

"Certified trades

"(21.1) For the purposes of this section, if a bargaining unit consists of employees who work in a certified trade under the Trades Qualification and Apprenticeship Act, an employee who is not the holder of a subsisting certificate of qualification for the trade or apprenticeship in the trade,

"(a) shall not take part in a representation vote; and

"(b) shall not be considered in the board's determination of the percentage of employees in the bargaining unit who are members of a trade union."

This amendment is the result of submissions made to us in Kitchener by, amongst others, the Ontario Pipe Trades Council. I am advised that since the year 2000, after the Quadracon decision, the labour relations board stopped its long-time practice of only considering licensed apprentices and journeymen.

As everyone in this room knows or ought to know or does know, I'm sure, under the Trades Qualification and Apprenticeship Act, members of certain trades—pipe trades, electricians, plumbers, sheet metal workers, refrigeration and crane operators—must be licensed before they work on a building site. Ensuring qualifications is logical. It's all about public safety. No one wants the people putting water systems in a daycare or school to be untrained or unlicensed.

This amendment would remedy the current situation, which has allowed employers to stack certification votes with persons who are performing work illegally. They're

doing that work—they're called a plumber, electrician, sheet metal worker, refrigeration person or crane operator—but they're not licensed, so they're not legally working at that. They haven't met the standards. Clearly, there's an interest among employers who want to scuttle a union drive at the vote point in having these people stacking the deck.

This amendment would remedy the situation by ensuring that only licensed journeymen and apprentices with valid certification will be considered valid members of a union in a construction industry application that affected the mandatory—this only deals with mandatory certified trades. In other words, it's only in those workplaces where you have to have a licence before you can legally work there. I think it makes good common sense; it's a response to a very valid issue put forward by the building trades. It's one that I am very enthusiastic about.

It boggles my mind that it—I suggest that it was only oversight on the part of the government, when they were drafting this bill, that they didn't address this issue as well, because they've known about the issue since the year 2000. It wasn't under their watch, it was the previous government, but I'm confident it was only oversight on the part of the government. Am I fair in that observation, I say to Mr. Bentley's assistant?

The Chair: Mr. Kormos, talk to me, please.

Mr. Kormos: I say to Mr. Bentley's assistant, Chair, I'm sure it was only oversight, that in fact Mr. Bentley's assistant is sitting here saying, "I wish we had put that amendment in, because the government doesn't want to appear to be backing down to something Kormos moved, because maybe that would be too radical," or something like that. After all, the government is far more comfortable with Tory policy than they are with NDP.

I ask the committee to consider this amendment as one which supports the broadest intent of the bill.

The Chair: Any further debate on this amendment?

Mr. Flynn: The issue is one that is worthy of consideration. When I think of the evidence that was brought forward by the various groups that attended the hearings, this is one that did stand out in my mind as well. The problem is, the motion as presented would create a significant inconsistency between card-based and representation vote processes within the act. The issue unfortunately, as presented in this context, is beyond the scope of the bill. Having said that, we understand that the policy considerations arising from this are complex and are worthy of further study and consideration. So within the confines of an amendment to this bill, I would say that it's unsuitable; as an issue, I think we're saying that it is worthy of consideration.

The Chair: Any further debate? I'll go back to Mr. Kormos.

Mr. Kormos: I think Mr. Flynn learned a new phrase today, "beyond the scope of this bill," and he wants to insert it into every sentence and every argument he makes. That phrase was used earlier when we talked about amendments not being in order because they don't address sections of the bill.

This very specifically addresses a section of the bill, as in your last three amendments, which were all amendments to what will be section 128.1, Mr. Flynn. It's very much talking about who is entitled to vote when a vote is called in a union organizing bid. That's what your section 128.1 is all about. This is so within the scope. This isn't just a bull's eye; this has got the eye, that one millimetre spot in the centre of the target, and this one drives it right home.

Perhaps we could deal with this in committee of the whole. I'd accept your commitment in that regard, if you assured me that the bill would be put into committee of the whole, and we can address this when it gets into the chamber.

The Chair: Any further debate? If there's none—

Mr. Kormos: Recorded vote, please.

The Chair: Recorded vote. Shall the motion carry?

Ayes

Craitor, Kormos.

Nays

Flynn, Leal, Ramal, Wynne.

The Chair: The motion does not carry.

Mr. Kormos, you're next; 13.2, please.

Mr. Kormos: The next amendment, 13.2, is now irrelevant because it referred to the new section 21.1 that would have been created by my previous amendment. So I withdraw it.

The Chair: I will go to Mr. Flynn; page 14, please.

Mr. Flynn: I move that clause 128.1(22)(a) of the Labour Relations Act, 1995, as set out in section 8 of the bill, be amended by striking out "subsections (1)" and substituting "subsections (1), (1.1)".

The Chair: Any debate on that amendment? If there's none, shall the motion carry? Carried.

Therefore, we are going to take a vote on the entire section 8, as amended.

Mr. Kormos: Recorded vote, please.

Mr. Arnott: Is there any opportunity for a quick discussion?

The Chair: Yes, of course. On the entire section?

Mr. Arnott: Yes. I would just again express my personal concern about this section and express support for Mrs. Witmer's statement earlier on section 8, that it's a real problem when the government is denying the secret ballot vote to many workers.

I'm sure all members of the committee over the last few days were watching television to see the Canadian veterans returning to Holland to participate in commemoration of Victory in Europe Day, or V-E Day. Certainly it was an overwhelmingly emotional thing for the veterans to return to Holland and receive the appreciation of the Dutch people. I saw some of it on television and had a chance to attend a Legion event in my own riding on Saturday.

What I'm trying to say is, that generation of Canadians, who fought a war and many of whom died, to some degree was fighting for the right of a secret ballot vote. Clearly, it's the position of our party that secret ballot votes should be the rule as opposed to the exception in terms of important decisions with respect to unions, whether or not the unions would be organized or taken away and that sort of thing.

I would ask all members of the committee to give serious consideration before they vote on this and pause one last time to think about the importance of the secret ballot vote and whether they want to vote against it in principle.

The Chair: I believe we are ready for the recorded vote.

Mr. Kormos: A recorded vote, and asking for a six-minute adjournment prior to the vote, pursuant to the standing orders.

The Chair: We will come back to vote six minutes from now.

The committee recessed from 1720 to 1726.

The Chair: We are going straight to a recorded vote unless there is any other debate. Shall section 8, as amended, carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 8, as amended, carries.

Shall section 9 carry? Those in favour? Those against? Section 9 carries.

Shall section 10 carry? Those in favour? Those against? Carried.

On section 11, instead of breaking it down, we shall go to the section. Are there any comments before we take a vote?

Mrs. Witmer: Yes. We are going to be voting against section 11 of the bill because it recognizes certification without a secret ballot vote.

The Chair: Any further debate?

Mr. Kormos: New Democrats are going to be supporting section 11 of the bill. It's remarkable, because what you've noticed is that the things Conservatives support when it comes to labour relations tend to be the things New Democrats oppose, and vice versa. But the Liberals embrace a whole lot of the Tory Bill 7 in that they maintain the denial of card certification to the vast majority of workers. New Democrats are clear on where they stand with respect to working women and men. We'll be supporting section 11.

The Chair: Is there any further debate? If not, I'll ask for a vote.

Mrs. Witmer: Recorded vote.

The Chair: A recorded vote. Shall section 11 carry?

Ayes

Craitor, Flynn, Kormos, Leal, Ramal, Wynne.

Nays

Arnott, Witmer.

The Chair: Section 11 carries.

We'll go to section 12; page 16, please.

Mrs. Witmer: I'm going to move that subsection 12(3) of the bill be struck out. This supports the fact that there would be certification without a secret ballot vote. Obviously, we believe that each person in this province should have the right to freely and secretly make a decision through the secret ballot process.

The Chair: Is there any debate on the motion? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Shall section 12 carry? Those in favour? Those opposed? The section carries.

Shall section 13 carry? Those in favour? Those opposed? Section 13 carries.

Shall section 14 carry? Those in favour? Those opposed? Carried.

Section 15, page 17, Mr. Flynn.

Mr. Flynn: I move that subsection 15(2) of the bill be amended by striking out "comes into force" and substituting, "is deemed to have come into force".

This amendment simply avoids a gap in the application of all the residential construction provisions.

The Chair: Any further debate? If there is none, I'll ask for a vote. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Shall section 15, as amended, carry? Those in favour? Those against? Carried.

Shall section 16 carry? Those in favour? Those against? Carried.

Shall the title of the bill carry? Those in favour? Those against? Carried.

Shall Bill 144, as amended, carry? Mr. Kormos.

Mr. Kormos: The New Democrats have been very consistent from the get-go around this bill. While we support, of course, the restoration of remedial certification, while we support, of course, the elimination of the silly requirement around decertification posters in unionized workplaces, while we support the restoration of powers to the Ontario Labour Relations Board to make interim orders, including returning people to their workplaces who have been fired during the course of a union bid, in the exercise of incredibly oppressive powers by an employer, and while we support card-based certification—oh, we support that so enthusiastically—we cannot attach our votes to a bill which denies the vast majority of workers in this province the right to organize themselves with card-based certification.

1730

The government is going to try, understandably, to argue that it's only because of the unique circumstances

of the labour workforce on a construction site, the peripatetic nature, if you will, of that workforce. The real issue, though, is whether the signature on the card is a valid way of determining whether or not a worker belongs to a union. I happen to think it is. Nobody from the government suggested that somehow they're being more liberal—dare I say it?—with the building trades in that they'll take a building trade worker's signature even though it's not quite as good as a so-called secret ballot. Nobody said that.

Every witness we heard from in the trade union movement—building trades, non-building trades—the building trades themselves didn't argue that they should have concessions made for them or somehow be given this extra little bit of oomph just because of the nature of the workplace. The fundamental argument was that a signature on a union card is rock solid, that it's as good as anything in terms of determining whether or not a person can and will belong to a union.

I've grappled with the argument that the government presents, because they've got to somehow justify this. Even the government members haven't suggested that a card-certification signature is somehow less competent or less complete than any other method, and obviously, the competing method is the so-called secret ballot. Nobody in the government has said that, because if they said that, then they would undermine themselves in terms of letting building trades workers sign a union card, so of course they can't say that.

To me, this is it in a nutshell as I've reflected on this. As I say, I know there are some folks in the building trades who somehow think they won a major victory with the government. I say that who really won the victory was the Wal-Marts of Ontario.

Mr. Ruprecht, come on in.

Mr. Tony Ruprecht (Davenport): I'm just looking for somebody.

The Chair: It's not Wal-Mart, I hope.

Mr. Kormos: The real victors here are the Wal-Marts. We didn't hear from a single representative of the construction industry who expressed any great concern about card certification, did we? There wasn't a single representative from employers in the construction industry who said, "Oh, Jeez, don't bring back card certification." Nobody from the construction industry said that, because the construction industry, I believe, has a pretty mature relationship with its workers. That's been the result of years of hard work on the part of the unions and some legislative prompting along way. We saw some of that over the course of the last few years. But, by goodness, we heard other people come forward and say, "Please, card certification for those little \$9-an-hour workers is bad, very bad. It's going to send us to hell in a hand-basket in short order."

I want to know how it is that for 50 years we've had card-based certification, and even after Bill 40, which was probably the most progressive labour legislation—well, not probably; it was, and God, the New Democrats took a beating for that one from the corporate world—did we see an orgy of union organizing? Quite frankly, no.

Like you, I come from communities where we've got little employers, medium-sized employers and big employers. We have some workplaces where there have been union drives as long as I can remember, with no success—and I'll argue, legitimately no success—because in those particular workplaces there isn't the appetite on the part of those workers for a union.

Quite frankly, where it happens most often is the Dofasco-Stelco scenario. It was those Stelco workers setting the bar for Dofasco. Dofasco workers probably should be paying union dues to somebody, because they're getting most of the benefits of a trade union without ever having had a trade union. In fact, it's a union town. Stelco workers—United Steelworkers, in that case—set the bar.

Similarly with some of the auto industry, we have some notorious non-union foreign manufacturers and assemblers here in the province, but it's the Big Three—CAW, Ford, General Motors and Chrysler—that set the bar.

I think a unionized workplace is a safer one, a stronger one, a more prosperous one. I think union towns are healthier and more prosperous. You folks have heard my comments about that.

I close with this: Make no mistake about it, I resent and I will challenge—I've heard about the efforts to try to drive a wedge between two strong sectors in the trade union movement, which I find very unfortunate, playing off building trades workers against other workers. Some of those unions may buy it, but most of those unions, if not all of them, understand that workers are successful when they work together in solidarity. While there may have been the briefest of wedges driven, it won't last long. There will be solidarity in that trade union movement, make no mistake about it.

I regret some of the lack of candour in how this legislative process has been presented to some of the trade union movement, in particular, the building trades. However, having said that, I'm confident that there isn't a unionized building trade worker in this province who doesn't understand exactly where the NDP is on this issue, that the NDP is squarely with them on the right to card-based certification but also believe so strongly that we can't deny other workers the same right, that we're not going to support a bill that denies those workers.

When you support a bill, you have to weigh these things. You have to say, "Do I agree with enough of the bill that I'm comfortable standing with the bill, or are there parts of the bill that I find so contentious that there isn't a snowball's chance in hell of me or the NDP lending their name to the bill?" Well, there isn't a snowball's chance in hell of the NDP supporting the bill, notwithstanding all of the things I've said and the support I've given on the record for section after section. There isn't a snowball's chance in Hades that New Democrats can or will support a bill that says to the vast majority of workers in this province that their signature isn't as good as a construction worker's. In fact, in my view, it's cynical and suspicious. Ms. Wynne tore into me for being

so cynical a couple of weeks ago when we were at an event. She said, "Oh, Peter, you're cynical." You're darn right I'm cynical. I've got a whole lot of years of foundation for that cynicism.

This is all about Wal-Mart. It's all about preventing workers from organizing. In the building trades, the employers didn't raise a single objection to building trade workers having card-based certification restored, but oh boy, we heard from the others.

I will not support the bill in its entirety, notwithstanding that I and New Democrats supported section after section, because of its denial of card-based certification to Wal-Mart workers and others of their kind.

Mr. Leal: I happen to think that Bill 144 and the amendments we've made bring a significant amount of balance back to the labour environment in Ontario, a balance between workers' rights and employers' rights.

The other thing I think is important is that we try to maintain Ontario's competitive position. We can talk about times 25 and 30 years ago, but let's just look at the manufacturing sector for a moment. We heard that the Conservatives supported card-based certification 25 or 30 years ago, and Liberals—it went through a long history—but over the last decades, from 1988 to today, after the free trade agreement was brought in, things changed dramatically in terms of investment decisions with regard to Ontario and its competitors. When you look south of the border—and I had a staff person check into it—with regard to the National Labor Relations Board in the United States, in the competitive jurisdictions with Ontario, New York, Michigan, Pennsylvania and Ohio all have vote-based certification in the manufacturing sector. Those are the areas Ontario competes with each and every day. We can have some discussion about the pros and cons of free trade, but one thing we know for sure is that it sort of reoriented investment decisions from an east-west axis to a north-south axis.

1740

So for me, to make sure that a labour bill allows Ontario to remain in that competitive position—when investments are being made in jurisdictions, they look at these kinds of situations to make sure they're going into a jurisdiction where investment opportunities and return on those investment opportunities are relatively the same. We know now that Toyota is looking for a significant investment in Ontario. I think it's key, as we move forward with this kind of legislation, that Ontario is able to maintain its competitive position.

I would argue, and we go back and forth, that there are some unique characteristics in the construction industry. I would say that the construction industry is more of a domestic issue, where you could have some different rules applying, as opposed to those sectors that are competing on a more international basis, on a north-south axis.

I've reviewed this. I think it brings balance back, and I'm prepared to support it.

Mrs. Witmer: I appreciate and respect Mr. Leal for his comments, but I would hasten to add that some of the

legislation the Liberal government has been bringing forward, starting with changes to the 60-hour workweek, has created a tremendous amount of additional red tape for employers in this province. This particular piece of legislation, which also has a negative impact on job creation in the province, will do little to stimulate investment.

We've already received anecdotal information. I've personally heard from employers who are reconsidering their investment decisions here in Ontario. One is considering moving to Mexico. It employs about 300 people. I've heard of others who are looking to move to a more favourable province that has a better environment for job creation. I've talked to somebody else about moving to China.

I think we need to realize that if we continue to tilt this balance in a direction that does not create a favourable environment for investment, we're going back to 1990 to 1995, when we lost 10,000 jobs, instead of 1995 to 2003, when we saw the private sector create over one million new jobs.

I think this bill, in some respects, with some of the provisions permitting remedial certification and interim reinstatement etc. is going to unfairly disadvantage small businesses in Ontario. It's going to be very difficult for them when they're confronted by very large, well-resourced unions that understand the legislation. I think these two pieces of legislation together are really not going to be a stimulus to growth, prosperity and job creation.

Also I am concerned about the loss of the democratic secret ballot for employees and freedom of speech for employees.

I think it is regrettable that the government is not considering job creation and economic growth, because if you don't have economic growth and job creation, there's no money to pay for education or health. You can't continue to ask the federal government for more money.

Mr. Flynn: Chair, I'd like to thank you, and the staff too, for your conduct during the hearings and during the clause-by-clause today. I think all parties have presented their cases quite well and in ways that I think were to be anticipated at the start of the process, as we went through the proposed legislation. It's obvious some people think we have gone a little too far; some people obviously don't think we're going far enough.

I think it's important to be clear on just what is in the proposed legislation and what is not. It reinstates remedial certification and interim reinstatement. It gets rid of the decertification process, which was just a nuisance to everybody. It gets rid of the salary disclosure. Union members have access to that information, in any event. I think it brings back balance and fairness. It extends card-based certification to the construction sector because of some very unique traits of that sector. I understand that people would prefer we didn't go that far; I also understand that people would prefer that we go much further. It's a little bit like Goldilocks: Some think it's too hot; some think it's too cold. I happen to think it's just right. I think it's supportable.

At the end of the day, it's time to stand up. You can't be in favour of parts of the bill—I mean, you can if you want to be, but do you agree with getting rid of decertification posters? Do you agree with getting rid of salary disclosure? Do you agree that card-based certification should be extended to the construction sector? If you do, then the bill is eminently supportable. If you don't, that's an entirely different question. I think some people here have been honest and upfront about their non-support for those changes taking place, but you can't suck and blow. In my opinion, it's time to stand up for what you think. It's one thing to support various parts of the bill, but then at the end of the day say, "But because of that, I won't support any part of the bill."

There are some very positive things that I think are going to bring back a lot of balance, a lot of fairness. I think the job creation record of this government to date has been tremendous, something I expect to continue, something that I don't expect to be retarded at all by these proposed amendments. I think it's a very fair, very supportable, very progressive piece of legislation that deserves all our support.

The Chair: Do you still have comments, Mr. Kormos?

Mr. Kormos: Of course you think that. You're paid a whole lot of money to think that and to say it. That's fair enough, because you have restored balance and fairness for some workers. You see, all we're saying is that if you're going to restore balance and fairness, you've got to restore balance and fairness for all workers.

I have this irresistible urge to ask Mr. Leal, when the Hansard is printed, to please take a look at what he said, because knowing, as we do, that unionized workplaces are better-paid workplaces, that they're safer workplaces, that they are workplaces wherein they're more likely to have a pension and a benefits package, what you've said, Mr. Leal, is that we have to sacrifice those workers to be competitive. Implicit in your argument is that unionized workplaces may be better for workers, but by God, if we're going to be competitive with New York state and these other vote-only states, then we've got to be in line with them.

That's the trap of free trade. I'm sorry; we're never going to be able to compete with slave labour in China, and we shouldn't let slave labour in China—

Interjection.

Mr. Kormos: Well, they use prison labour for production. We should never let the standards of these other countries downgrade ours. We should be radical in calling upon our government to ensure the level playing field by enhancing the standards in these other countries.

I've got a feeling you're going to try to correct the "misinterpretation," as you're going to put it, that I put on your language, but I'd be careful, because you're liable—the spadework is getting so that you're hitting water pretty soon. When you suggest to someone that we should compete with low-wage economies—because when you say that you don't want to see unions, that

means you don't want to see higher wages. I don't think we have to sacrifice our economy or sacrifice our workers and their families on the altar of the economy. I think a progressive government can do both.

In fact, if you talk about auto sector expansion, you're talking about auto sector expansion in a jurisdiction where the auto sector is highly unionized, with a pretty tough union, the CAW. So I think your comments are dangerous ones.

Mr. Leal: I was making the direct comparison because in those states we have the UAW, United Auto Workers, and we have the Steelworkers, who are formerly brothers and sisters, who have organized down there. They've accepted vote-based for their union organizing in those states, which are highly unionized. So I was just making the comparison of two unionized jurisdictions, Mr. Kormos.

The Chair: Ms. Wynne?

Ms. Wynne: The reason I support this legislation is that I do not support the argument that Ms. Witmer made. I really believe that remedial certification and the decertification posters—the moves we've made will help all workers. I believe in organized labour. I think that organized labour sets the bar. I completely agree with that. But I will not support the bill because there's one piece that doesn't go as far as some people would like us to go. By the same token, I will not support the bill because it doesn't go as far in the other direction.

I agree with Mr. Flynn that we're striking a balance. I think the point Mr. Leal is making is that the environment we're operating in is different than it was 50 years ago. That's a reality.

We're putting legislation in place that moves very far to protect workers in this province. I think it's a great shame that the NDP isn't going to be supporting this piece of legislation.

The Chair: I thank you. I think we've had quite a discussion. Are we ready to vote?

Shall Bill 144, as amended, carry?

Mr. Kormos: Recorded vote.

The Chair: Recorded vote.

Ayes

Craitor, Flynn, Leal, Ramal, Wynne.

Nays

Arnott, Kormos, Witmer.

The Chair: This carries.

Shall I report the bill, as amended, to the House? Any comments? All in favour? Agreed. That carries.

I thank you very much for your participation. I'm sure we have done something positive. We'll leave the rest to the people. Thank you again.

The committee adjourned at 1750.

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Journal des débats (Hansard)

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Wednesday 18 May 2005

Mercredi 18 mai 2005

*The committee met at 1540 in committee room 2.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

SUBCOMMITTEE REPORT

The Chair (Mr. Mario G. Racco): Good afternoon. Welcome to the meeting of the standing committee on social policy and consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents.

Our first order of business before we commence the public hearings is a motion for adoption of the subcommittee report. I would ask anyone to please do so. We do have it on our desk.

Mr. Norman W. Sterling (Lanark–Carleton): Could I ask a question? First of all, I can't quite understand why we're not meeting in the Amethyst Room, where we would be televised and people across Ontario would be able to witness these proceedings, which are very important to as many as millions of Ontarians.

The Chair: I must say that nobody asked me this question. I didn't think about it, so I don't have an answer. Does the clerk have an answer to the question?

The Clerk of the Committee (Ms. Anne Stokes): This committee normally meets on Monday and Tuesday afternoons in committee room 1. We received a special order of the House authorizing the committee to meet outside the normally scheduled times. Committee rooms 1 and 151 are scheduled on Wednesdays and Thursdays, so I took the other committee room that was available. There was no other request to make any changes.

Mr. Sterling: Well, I'm disappointed in that we have the privacy commissioner here today.

Secondly, my two regular members of the committee are not here, but notwithstanding that, I received a copy of the report and would ask the committee to consider approving those items that are necessary to carry on

business today—for instance, items 1, 2, 4, 6; item 6 would have to be changed, because I believe there's been an agreement to give the privacy commissioner 30 minutes, plus 15 minutes for responding to questions—basically those decisions that are necessary to proceed but don't necessarily terminate the hearings or the opportunity for people who might wish to make presentations in the future to contact the clerk. We can decide that tomorrow before we disperse.

Therefore, after hearing the privacy commissioner in particular, whose briefing I've already read—she points to some reasons why we might want to consider doing something other than what the subcommittee has decided.

I believe this is the second subcommittee report as well. There was a first one, which all members of the subcommittee agreed to, and then there was a second one, which only two parties agreed to.

The Chair: Mr. Sterling, just for the record—and the whips can correct me if I'm wrong—first of all, the first time a report was put together, one of the agreements was that the whips would go back to their House leaders and if there were any changes, they would bring it back, and that's exactly what happened. So in fairness, there was such an agreement with the three whips who were present.

In relation to the studio, I would be the first one who wants to be on camera. I certainly think we should be, for a number of reasons. So I do agree with what you said, but I think the clerk explained the reasons.

Nonetheless, I don't have any indications or instructions from anybody telling me that there was any change from what's in front of us. I don't have a motion. I heard what you said, Mr. Sterling, that's fine, but I need a motion. Ms. Wynne, maybe you can—

Ms. Kathleen O. Wynne (Don Valley West): Yes, I'd like to move the subcommittee report.

The Chair: It needs to be read into the record, which means you have to go over it, and then, of course, anybody can make any comments.

Ms. Wynne: Your subcommittee met on Thursday, May 12, 2005, to consider the method of proceeding on Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents, and recommends the following:

(1) That the committee meet for the purpose of public hearings on Bill 183 in the afternoon of Wednesday, May 18, and Thursday, May 19, 2005, in Toronto.

(2) That the clerk of the committee be authorized prior to passage of the subcommittee report and prior to receiving authority from the House to place an advertisement on the Ontario parliamentary channel, the Legislative Assembly Web site and in a press release regarding the proposed meeting dates on May 18 and May 19, 2005.

(3) That the deadline for those who wish to make an oral presentation on Bill 183 be 5 p.m. on Monday, May 16, 2005.

(4) That 10 minutes be allotted to organizations and individuals in which to make their presentations.

(5) That the deadline for written submissions on Bill 183 be 6 p.m. on Thursday, May 19, 2005.

(6) That the privacy commissioner be invited to make a 15-minute presentation before the committee the afternoon of May 18, 2005, and that each caucus be allotted five minutes to respond to the commissioner's statement.

(7) That the clerk be authorized to schedule groups and individuals in consultation with the Chair, and that if there are more witnesses wishing to appear than available, the clerk will provide the subcommittee members with a list of witnesses, and each caucus will then provide the clerk with a prioritized list of witnesses to be scheduled.

(8) That the research officer provide the committee with a report on background material and a summary of witness presentations.

(9) That amendments to Bill 183 should be received by the clerk of the committee by 5 p.m. on Thursday, May 26, 2005.

(10) That the committee meet for the purpose of clause-by-clause consideration of Bill 183 on Monday, May 30, 2005, in Toronto.

(11) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

Mr. Chair, I understand that there have been conversations among the House leaders, but there has been no other agreement reached.

The Chair: OK, that is what has been moved. I will open the floor for any debate on the motion.

Mr. Ted Arnott (Waterloo-Wellington): First of all, I'll preface my remarks with the statement that I supported Bill 183 in principle at second reading because I do support the idea of greater disclosure of these adoption records—in principle. If my memory is correct, I believe I supported the member for Toronto-Danforth's private member's bill—at least one of them—when it came to a vote at second reading. If I'm not mistaken, that's my recollection.

I am compelled to put some comments on the record this afternoon, because I think it's important for people to know that there were two subcommittee meetings last

week. Our subcommittee met on Tuesday, May 10, and considered an approach to this bill so that we could ensure that there would be a reasonable public process for how this bill would be handled, involving, in particular, advertising of the fact that this committee is having hearings and ensuring sufficient time so that people who have an interest in this bill and want to make a presentation, either for or against the bill, would have an opportunity to do so.

I'm concerned that with this second subcommittee report—of course, we had the second subcommittee meeting on Thursday of last week—we are contemplating an expedited process for this committee dealing with the bill, in such a way that a significant number of interested people who might very well want to have a say, to have an opportunity to discuss this particular issue with this committee before we make any final decisions that may have a profound impact on people's lives, will not have the opportunity to do so.

I recognize and understand that there was notification on the parliamentary channel, but in my riding, most people don't have access to the parliamentary channel. In most cases, people who live outside of developed communities either receive their television signals through the air, by antenna, or they may have a satellite dish, and most of the satellite dish companies do not carry the legislative channel, to the best of my knowledge. So I'm concerned that there are going to be many millions of people in Ontario who may very well want to speak to this bill but won't even know that this committee is having its hearings.

In the initial subcommittee meeting of last week—again, the Tuesday meeting—we came up, as a subcommittee, with a way of dealing with this bill, as I said. We had talked about having public hearings on Monday, May 30, Tuesday, May 31 and Thursday, June 2. We were going to have extended hearings on that particular Thursday from 9 a.m. until 1 p.m., then of course breaking while the House was having its routine proceedings, and then resuming again from 3:30 to 6 p.m., if necessary, all in Toronto, but ensuring that there would be a considerable amount of time for people to make presentations.

We had tentatively agreed, subject to the agreement of the full committee, that there would be advertising in the Toronto Star, the Globe and Mail, the Toronto Sun, the National Post and a French-language daily, that there would be an advertisement in each of those newspapers to inform people that this committee would be hearing this bill. Again, this is kind of standard procedure. This isn't unusual; this is what we normally do, especially with controversial legislation where the issue becomes somewhat polarized.

We had agreed that the minister and the privacy commissioner would be invited to make a presentation and that caucuses would have an opportunity to ask questions of both the minister and the privacy commissioner. We agreed that the clerk would have an opportunity to schedule groups and individuals, in consultation with the

Chair, which again is a fairly standard procedure; that amendments to Bill 183 would be accepted by the clerk by 5 p.m. on June 6, again, after the public hearings take place, so as to ensure that there is an opportunity for us to hear the witnesses before we move the motions which will perhaps amend the bill; and that clause-by-clause consideration of Bill 183 would take place on Tuesday, June 7. So if indeed the bill was dealt with during that time frame and nothing unusual happened, most likely the bill would have been referred back to the House on June 8, again ensuring that there was a reasonable public process.

1550

I have to say that I was disappointed by the way the second subcommittee meeting went. I asked on most of the key issues that we vote on the subcommittee motions that were being brought forward by the government representative on that committee. My recollection is that I voted against most of them. I don't think there were notes taken, but I have to put that on the record because the member who was there representing the NDP, the member for Niagara Centre, in most cases, if not all cases, was supportive of what the government was proposing. But I want it on the record that I felt that because of the nature of this bill, because of the emotion on both sides, we needed to ensure that there's a reasonable public process so that we're not ramming this bill through the Legislature before people even know that it's before the Legislature.

Thinking back to my own private member's bill—and I'm glad the member for Ancaster is here—Bill 30, the Volunteer Firefighters Employment Protection Act that was before the Legislature in the year 2002, I knew that there were some firefighters on the volunteer side of things who were very supportive of my bill. I also knew that the professional firefighters' association was totally opposed to my bill, but I insisted that they be given an opportunity to make their views known at a legislative committee. I wasn't trying to ram it through in such a way that they wouldn't know what was happening or somehow ensure that they wouldn't have a chance to have their say. They should have had their say. As much as I didn't agree with what they were saying—they were totally opposed to my bill—I felt they should have an opportunity to speak at that particular standing committee. In fact, I welcomed the opportunity to have the dialogue with them. My bill was defeated, but I would still suggest that that's the way to handle a controversial bill. When you've got two significant organizations or groups in our province that are on different sides of an issue that has become somewhat polarized, there should be an opportunity for both sides to make a presentation.

I'm pleased that the privacy commissioner has been allocated time. I look forward to hearing her views because I think we'd be remiss if we don't give serious consideration to the privacy commissioner's professional opinion on this issue. Thank you, Mr. Chairman.

The Chair: Mr. Arnott, thank you. Let me see what we're going to do now.

The next person I will recognize is going to be Ms. Churley, and then Ms. Wynne. Then I'll go back to Mr. Sterling, in that order, and then of course those of you who wish to speak.

I want to remind all of us that after the privacy commissioner, we are planning to have five minutes for each party's comments, or at least that's what the agenda says, unless there are any changes. After that, we were going to start with the public at about 4 o'clock. Of course, the more we discuss the matter, the longer we'll take for the other people. The beauty of the agenda, though, is that there is no limit, which means we can stay longer if we choose to deal with today's agenda. If I can ask all of you to please keep that in mind.

We are still debating the motion. Ms. Churley, you have the floor.

Ms. Marilyn Churley (Toronto-Danforth): I agree with you, Mr Chair, that we have many people here and we need to be moving on the bill. I'd just simply like to state that I sat on the first subcommittee and, to nobody's surprise, I objected to the first proposal because of the concern—I think people did see me as a bit biased these days, for a couple of reasons: wanting to move forward with the bill, but secondly, of course, leaving that aside, I just want to put on the record that although this bill is somewhat different from mine and some amendments will be made accordingly to deal with some of them, this issue has been brought to the public before. People, many of whom are here today, have come and spoken to one of my five bills, and some of the people who are here today have been working on this issue for 20 years, or more, in some cases, and have been to committee hearings here well before we were in this place.

I just want to point out that although I hear what the member said, this is not a new issue. This is perhaps a new bill, and a government bill, but it's not like we're visiting, nor is it like the public and the stakeholder groups are visiting, and becoming aware of this issue for the first time—on the contrary.

I believe that, yes, there are different views on this, but my experience, having brought a bill before the Legislature five times and my personal experience and research and information that I've provided indicate, and polls have indicated, that the majority of Ontarians, indeed Canadians, support moving forward on this. We're well behind.

I should point out as well, in closing, that each time my bill has gone forward, the majority of members from all parties—a vast majority—have always been in support. So this is democracy at work here. We're having some public hearings, but we should move forward out of respect for those people who have been waiting for this for well over 20 years.

The Chair: Ms. Wynne.

Ms. Wynne: Just very briefly. I really don't want to take a lot of time, because people are here to speak. I just want to say that since the subcommittee meetings, there have been a number of conversations among the parties to try to find flexibility. That has not been agreed upon

by the opposition. I think we need to move ahead now because people have come to speak to us under the arrangements that were made by the subcommittee, and the less time we take on this, the better. People have come to speak to us and we should use the time for the public in the best way. So I won't be saying anything else, Mr. Chair.

The Chair: And I thank you for that, but can I go back to Mr. Sterling. Mr. Arnott, I had to recognize him first.

Mr. Sterling: OK. I just want to point out that this bill was introduced on March 29 of this year. That's not two months ago. For anyone to claim that the public is familiar with what's going on here today in huge numbers is totally false. It doesn't matter how many private members' bills I introduce or any private member introduces in this Legislature, it is not taken as seriously as a piece of government legislation. This is the first time that this particular matter has been put forward by a government.

So the whole notion that this is old hat and people know about this, people are going to be aware that this is going on, is totally false. You will see that when you hear from the privacy commissioner, who has sent her brief to us, and I've had an opportunity to read it. She brings forward numerous examples of people who have called and written to her about their concern over this bill.

My concern is about a very speedy process. I do not understand. When we have had this law for 60 years originally and 25 years since the last major amendments, why do we have to rush this through in eight or nine weeks? I don't understand the purpose of doing that, when in fact for a whole number of people in this province, lives are going to be put in jeopardy if this bill goes through without amendment.

I'll turn it over to—

The Chair: I will recognize Mr. Arnott and then Mr. Klees, who also wishes to speak. Normally, what I do is move around the parties, but if nobody wants to speak, I will continue. So, Mr. Arnott, and welcome, Mr. Jackson.

Mr. Arnott: I won't take a lot of time, but I do want to put something on the record.

This committee normally sits Mondays and Tuesdays if it has business and it needs to sit. The subcommittee meetings were last week. We have to go through this process of accepting the subcommittee report, and I had asked specifically that the committee be allowed to sit on Monday or Tuesday of this week so that we could deal with this matter, the subcommittee report, before we start any hearings that might be forthcoming as a result of the subcommittee report. There was no support from any of the other members of the subcommittee that we would have our normal meeting. So if anybody says that this little intervention by me or anybody else over here is delaying the public hearings, I want it to be known that I wanted us to deal with this on Monday or Tuesday. It requires a motion of the House to have this committee sit on any day other than Monday or Tuesday, and of course that motion was put to the House last Thursday.

The Chair: OK?

Mr. Arnott: No. By way of conclusion, I wish to move that we amend the subcommittee report, point number 7, to allow the privacy commissioner—

Interjection.

Mr. Arnott: We are asking that the subcommittee report be amended to allow the privacy commissioner 30 minutes to make her presentation today, leaving the rest the same as it is in the existing subcommittee report that we're discussing, so allowing the privacy commissioner 30 minutes instead of 15.

1600

The Chair: OK. Now that I have an amendment, the only discussion I want to hear is on the amendment, please. I had recognized Mr. Klees. Is it on the amendment?

Mr. Frank Klees (Oak Ridges): Yes.

The Chair: OK. Then I'm going to recognize you, but I will be looking to the other parties, if they wish to speak, because almost everybody in your party has spoken.

Mr. Klees: Initially, my comments were going to be to the original issue, but I'm pleased to speak to the amendment. I want to support Mr. Arnott. My personal preference would have been that the privacy commissioner be given an hour to make her presentation. I think it's extremely important that we hear from her. She brings forward a number of issues that we as legislators have a responsibility to consider. I believe that she should be free to provide that information in its fullness.

I believe the purpose of any public hearing is to ensure that we have information available to us as legislators so that we can make informed decisions regarding this legislation. Any restriction of the commissioner's time, I believe, is contrary to the very purpose that we're here for. So, Mr. Arnott having made that motion, I fully support him.

The Chair: Ms. Wynne? Again, as a reminder, only on the amendment, please.

Ms. Wynne: It is on the amendment. I'd like to read a letter into the record that has to do with this issue. This letter is from Dwight Duncan, the government House leader, to Mr. Tory, the leader of the official opposition, dated Wednesday, May 18.

"Dear Mr. Tory:

"I am writing you today in regards to committee hearings for Bill 183, An Act respecting the disclosure of information and records to adopted persons and [birth] parents.

"As you may be aware, the House leaders of all three caucuses met this afternoon at noon to deal with this bill, in addition to a number of other legislative items on the order paper. At that time, I offered to facilitate Ms. Cavoukian's request of appearing before the committee for 30 minutes, followed by five minutes of questions for each caucus. What's more, I offered to extend public hearings on Bill 183 into the week of May 30.

"I have been informed through staff that your caucus has rejected this offer.

"In addition, it is my understanding that your caucus is not prepared to co-operate on moving any legislative items forward that are before the House and/or committee.

"At this point in time, since your caucus is unwilling to provide flexibility on any legislative issue, the committee hearings will proceed as decided by the majority of the subcommittee members.

"Sincerely,

"The Honourable Dwight Duncan."

I suggest that the offer has been made, and that we should move ahead and let the public speak.

The Chair: I thank you, Ms. Wynne. I think Ms. Churley is next. I would ask that the language used be just like in the House.

Ms. Churley: I'm not quite sure what's going on, but I would like to propose that out of respect for the people—look at their faces—who are here today to give deputations, we agree to disagree in terms of the process. Here we are. We have people here who were invited to come forward today and who took time to prepare. It's very important to them that they be heard today. Some of them came from out of town to be heard. I would certainly like to appeal to all parties to hear from the public.

Interruption.

The Chair: First of all, the next person I will be recognizing is Mr. Jackson.

As the Chair, I have to run the meeting as efficiently as possible. The members have the choice to spend the time as they choose, and I must respect that. I ask the people to please understand that. I understand that it is going to be very emotional for some. Some statements will be quite emotional. Can we keep that in mind, please? At the end of the day, we have to come up with something. Mr. Jackson, you're next.

Mr. Cameron Jackson (Burlington): First of all, I am very concerned by the accusations contained in the House leader's letter. This is the second time that the House leader has alleged and, in my view, breached the standing orders in terms of referencing conduct of a member or of one of the political parties when those facts, to our knowledge, are absolutely untrue. I'm going to ask for a 10-minute recess. If you wish to raise this letter and make those outlandish, false accusations through your House leader—and this is not what you are doing; you're simply a messenger with this letter—the fact of the matter is that we wish to call a recess to speak to your House leader about this. This cannot continue to go on, this sort of guerrilla tactic of just attacking people and, quite frankly, using false information to stylize what was a legitimate request to give an additional 15 minutes.

The Chair: I would ask again that we be careful in the language we use. Now, I'm used to the municipal level, where some language is acceptable; I understand at Queen's Park it's not. I would ask those of you who are a little more familiar to please use language that is acceptable; otherwise, I will have other people intervene. I would suggest that some of the language already used is

not proper, at least in the House it's not, and I think the committee should be treated the same. I have been asked for a 10-minute break.

Mr. Ted McMeekin (Ancaster–Dundas–Flamborough–Aldershot): For what reason?

The Chair: Mr. Jackson, do you want to summarize the reason? I heard you.

Mr. Jackson: If Mr. McMeekin isn't paying attention, that's his problem. I just want to get on with the hearings, but we cannot allow an outlandish statement, which is false, to be put on the record. This is a non-debatable item. We've called for a 10-minute recess so we can speak to Mr. Duncan's office.

The Chair: I'm going to ask for consent for the 10 minutes. Is there consent?

Mr. Jackson: It's not a matter of consent.

The Chair: The clerk tells me otherwise. Is there consent? Do I have consent, yes or no? I heard a no, which means I don't have consent. At this time, I'm told by the clerk—and I'm trying to follow the books, Mr. Jackson, trust me—that I need a motion. If you want a 10-minute break, the only thing I can do is receive a motion and deal with the motion, if there is one. Is there a motion?

Mr. Jackson: We have an amendment on the floor.

The Chair: OK, so we'll deal with the amendment, then. Any more comments on the amendment? Mr. Jackson, only a minute, please.

Mr. Jackson: The amendment is very clear on the face of it, that a very large number of Ontario citizens do not have a voice at these hearings, and as a result of their not having—

Interjection.

The Chair: Mr. Jackson, please.

Mr. Jackson: Does Mr. Ramal wish me to slow down?

The Chair: Excuse me. I am the only one speaking here, with the exception of the person I recognize. Mr. Jackson, you have the floor.

Mr. Jackson: The request that was made was for 15 minutes of additional time for an individual who holds a position of responsibility, who has carriage of hundreds of letters from families that are affected by this. We've made a legitimate request. We have an outlandish, false statement by the House leader to suggest that we did not accept an arrangement that includes the motion that's before us. I respectfully request that we grant the 15 minutes in the amendment, which is all we're asking for, and that we proceed. I would much rather spend the next 15 additional minutes for Ms. Cavoukian than calling a procedural order—which I know I have the authority to call—that takes 20 minutes.

The Chair: I still have the amendment on the floor. If there are no more comments, I'm prepared to take a vote. Let's see what happens, and we can move on from there.

All those in favour of the amendment, which means that from 15 minutes we'll go to half an hour; 15 plus 15.

Mr. Jackson: Recorded vote.

Ayes

Jackson.

Nays

Churley, Craitor, McMeekin, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We still have the motion on the floor, as originally introduced. If there are no more comments, I'll ask for a vote.

Mr. Jackson: Now I wish to speak to the main motion. Aside from some of the concerns raised by my colleague Mr. Arnott is an additional matter that was raised with the House leader, with a certain degree of cavalier disregard. There are House rules and procedural rules that insulate a minister and their parliamentary assistant from having two, three or four bills simultaneously on the floor of the Legislature. That is there for good reason. By legislative precedent, that occurs as well for the critics. One of the reasons we were wanting to schedule and have this meeting on Monday is because it wouldn't conflict with my responsibilities. The FRO legislation, Bill 155, is going on concurrently with this committee. This is one of the rare occasions I can ever remember when we've called upon MPPs in opposition to be in two places at once.

I want that on the record, because I think it's a terrible and dangerous precedent to be setting when you divide up limited personnel—in particular the NDP, with an eight-member caucus, and the Conservative caucus as well.

The other issues that have been put on the record with respect to the unprecedented public hearings, with no public notice or advertising, are a concern, and the unprecedented cancelling of the first subcommittee meeting and moving to the second subcommittee meeting, in my view, is a flagrant abuse of the procedures.

I understand, Chair, in your position of neutrality and in your interest in moving forward on the agenda, these are matters beyond your control, but I must indicate for the record that these are serious breaches of protocol and, frankly, an inappropriate way to deal with an issue of major public concern in this province. I say that as someone who has strongly supported many of the amendments that are coming before us, but I am offended by the manner in which this is being handled by this government.

The Chair: Are there any more comments on the motion? If there are none, then I will ask—

Mr. Jackson: I am missing one of my colleagues. I'd like to request a 20-minute recess until I can secure my additional vote.

The Chair: Therefore, we will break for 20 minutes, because it has been requested. I have no choice but to break for 20 minutes. I ask all of you to be on time, please.

If I may, for those people who are waiting to speak, this is a normal procedure. Please keep that in mind. We will be proceeding when the motion is carried, whatever the—

Interruption.

The Chair: Please, no such comments are allowed in this room, regardless of whether I agree or disagree.

The committee recessed from 1613 to 1631.

The Chair: Again, good afternoon. We're reconvening. Before I recognize Ms. Wynne, I would just like to make a statement at the beginning so that there is no misunderstanding, and it applies to all of us. We are here to try to come up with a bill the best we can. It doesn't matter if you agree or disagree; it is highly unacceptable for anyone, including us and the public, to comment on or suggest anything which is not really proper. So I would ask that no one make any comments, no matter what we say. That's the way it works here. Otherwise, we'll be wasting your time. We are paid; you're not. So you'd better allow us to do our jobs the best we can.

Mr. Jackson: On a point of order, Mr. Chairman: The vote has been called.

The Chair: Yes, you are first.

Mr. Jackson: No, there's no discussion. We'll call the vote and we can move on. That's the point of order.

The Chair: On the motion as it is?

Mr. Jackson: That's why we called.

The Chair: I have the original motion in front of me. Are there no other amendments?

Ms. Wynne: Could I just be clear as to what we're voting on? I apologize. Is it the subcommittee report?

The Chair: That's right. Specifically, we're talking about 15 minutes to be given.

The Clerk of the Committee: It's on the whole subcommittee report.

The Chair: Of course, it's on the whole subcommittee report. But the section that has been debated is in fact the 15 minutes. That's what's on the floor. I've been asked to take a vote.

Mr. Jackson: I'm sorry; my understanding is that our amendment has been defeated.

The Chair: Yes.

Mr. Jackson: You've called the question on the main motion. There's no subject to debate or discuss. You call the vote. At the point I call the vote, we expect to vote. You must call the vote now.

The Chair: That's what I was doing. Anybody in favour of the motion? Anyone against the motion? The motion carries.

OFFICE OF THE
INFORMATION AND PRIVACY
COMMISSIONER/ONTARIO

The Chair: At this time, I will be moving to the next step. The Information and Privacy Commissioner will now make her comments. There are 15 minutes for you,

madam. I thank you for waiting. Please proceed whenever you're ready.

Dr. Ann Cavoukian: Good afternoon, Mr. Chair, ladies and gentlemen, and members of the committee. I'm very pleased to have the opportunity to address the committee today on what I consider to be a very grave matter. I'm not only here to convey my concerns, but I'm here to speak for the countless others who cannot. I'm here to speak for those whose voices have not yet been heard and who will be heard through me. I cannot do justice to these individuals' voices in 15 minutes' time. I'm joined here today by Ken Anderson, my assistant commissioner for privacy, who will be joining me in answering your questions.

Just for your information, I've been with the information and privacy commission since its inception in 1987, and I was appointed commissioner in 1997.

Let me start by being perfectly clear about one point: I am in favour of promoting openness in relation to adoption information among consenting parties, and I am not objecting to the application of the bill after the legislation takes effect, provided that clear notice of non-confidentiality is given to birth parents and adoptees. However, this bill is retroactive. It will go back in time and change agreements that were made in the past, and that is what I oppose. I object very strongly to one aspect of the retroactive nature of Bill 183, and I am seeking an amendment to the bill today. I'm here to implore you to add a sense of fairness to the retroactive nature of the bill. This will be the focus of my comments today. I refer you also to my written submission, which addresses a number of broader issues relating to the bill.

I have received countless letters, many of them handwritten—you should see them—numerous e-mails and telephone calls from very worried and traumatized Ontario citizens whose lives are being disrupted as we speak and who oppose the retroactive nature of the bill. They cannot believe that they will no longer have a way to shield their records, as they had once been promised. Surely when you say something, it should be honoured. This is one of the hallmarks of a civil society. When governments or the courts make these promises, there is a special duty that the promises be kept, especially when dealing with the most sensitive of personal information.

You may have heard from others that no promises of confidentiality were ever made to birth parents in the past. To that I say, nonsense. I concede that some promises may not have been made and that some people may not have been given any assurances of confidentiality whatsoever; I accept that. In the past, there wasn't one single, cohesive system where everyone was told exactly the same thing and all records were treated in an identical fashion. But I assure you that all of the people whom I've heard from—and whom you're about to hear from; you're going to hear their words—were all promised confidentiality. Many of them were, in fact, told that their records would be sealed permanently.

Here is a small sampling of their voices. I have to read this. The first group is from birth mothers.

"I am horrified and shocked at the adoption disclosure legislation introduced ... by the government. I am one of the 'young girls' who thought they were 'safe'.... When I signed the adoption papers some 35 years ago, I was promised in a courtroom that my identity would be protected and that no identifying information about me would ever be released. I feel betrayed by the system.

"You must vigorously defend my right to privacy. I'm so angry I'm shaking, but I can't voice my anger since I feel I must remain silent about my past. How unfair to all of us who must remain 'voiceless' that this will be retroactive. And the laughable 'no contact' notice—who will report this and make a bad situation worse?

"We need" your—she's referring to myself—"strident defence of our right to privacy to get appropriate safeguards added to this legislation.... I, for one, do not want to take the risk of destroying the life I have built.... For obvious reasons, I must remain silent and anonymous."

Another letter:

"I am most distraught that my life is going to be turned upside down, my reputation sullied, my career ruined and that my family will be in shambles, if my privacy is violated by opening up adoption files.... Birth parents deserve the protection they were promised. Adoptions were confidential and there was never any reason to believe that this trust would be desecrated.

"Having this information disclosed will be so disruptive and cause undue chaos in the lives of many, particularly for those conceived through incest, rape and prostitution. I am convinced, that in some cases, suicide will result. This proposed legislation is a total violation of trust and lacks judgment.... I cannot speak publicly nor sign my name to this letter. Living in fear...."

Another letter from a birth mother who gave up her child for adoption in the 1950s:

"In my case ... we birth mothers were promised complete confidentiality upon adoption. They (the government) assured me, that adoption records were sealed with no possibility of them being opened any time. Please consider my situation now. I am 70 years old, 40 years married. I am a mother. I am a grandmother. None of my family members are aware of what happened to me when I was young. Is it fair that after 50 years, I am faced with a disclosure that would shock and affect my whole family...? I feel that my rights of privacy, which were promised by the government, are being broken, with no consideration given to birth mothers or their feelings. I apologize for not signing my name, but as you can tell by my letter, I am a real person with real concerns regarding this new law, and I thank you for your support and your sincere understanding of this very serious matter."

Another birth mother who wanted to remain anonymous, who was raped at the age of 17, became pregnant, and gave up her child for adoption:

"I don't wish to give my name or have anyone seek me out. I don't wish to see the child. I don't know who the man was that raped me. I can't tell them anything about that man. This was way back in the 1960s...."

"I was promised that my name wouldn't be disclosed, and like that article in the Star said, I would feel just ultimately betrayed.... I'm afraid that I would just simply go in the garage, and shut the garage door, and block the exhaust in my car, and end my life over this...."

"I just want to tell you that I just pray to God that this nightmare will be over and, you know, I feel sorry for these children or these people that don't know who they are, but can it not be something like from this point forward the adoption issue is open, the information is open for anyone?"

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Another birth mother:

"I am one of the vulnerable minority. In my case it was 1964 when out-of-wedlock pregnancy was shameful and hidden—not the openness we see today...."

"I am 69 now and my dear husband of 38 years is 76 and in fragile health. I believed the past was sealed and that I would carry the burden in my heart alone to my grave."

"My family will be devastated if the past opens up now. I just don't know how I will get through it as I am alone in this.... The minority is silent and afraid. Please continue to work to keep our privacy intact. If a 'no contact' was used it would be another cruelty for both sides—the hurt would be hard to bear."

It's signed, "One of the distraught minority."

Another letter:

"I haven't felt so distressed or isolated since 40 years ago when I was 17 and pregnant. This legislation, if passed, will have such an impact on so many families but those of us who have concealed pregnancies are powerless to write letters to the editor or speak out at meetings.... I can't begin to tell you how overwhelmed I feel.... I do so appreciate you speaking out for those of us who can't."

Another letter:

"I was assured my file and identity would be sealed always."

"It is wrong to expect we of 80 years of age and living in a much different era to conform to 21st century ideas and rules.... I do not want to relive 60 years ago. I would rather be dead. They have broken bonds of trust with birth mothers."

Another letter from a birth mother following a sexual assault:

"I was a rape victim and in 1947 I was a birth mother.... I was told by the CAS—the children's aid society—"not to mention that I was raped. I was also told my records and file would be sealed...."

"[The government has] taken away my privacy rights.... We cannot go public and speak for ourselves without exposing our privacy, which we are trying to keep, and were promised sealed records. You folks"—my office—"are the only ones who can help us."

Another letter:

"This legislation appears to be against elderly birth mothers. We are the ones that [were] told our records would be sealed and not to interfere with the adoption...."

"I am over 80 years old. If they [the government] wait a few years many of us will be dead and not a bother to the government. Retroactive [application of Bill 183] is wrong. I do hope someone will speak for us who do not want it. We cannot go public because we will expose our privacy."

Another letter:

"The ... government is taking away my privacy rights by bringing in adoption disclosure retroactively. I based my life on being told my file would always be sealed...."

"I am a birth mother from 1946. It is unbelievable they would go that far back to turn families upside down."

Another letter:

"I am a birth mother of 1947. It is cruel and unnecessary to go back to the 1940s and look for information. It is causing much trauma. I do not want to relive my trauma again as this is causing me to do.... I am willing to relate my health history but do not want to have identifying information retroactive."

Another letter from a concerned individual:

"There should be no retroactive adoption disclosure. It should start now so everyone is aware of this."

"It is unfair. I was promised sealed records always."

"It would be taking away our privacy rights—no government should stoop so low."

Another writes:

"I too am terrified that what I thought was a promise of privacy many years ago may be broken and my world altered, possibly irreparably."

From a birth father:

"I am one of those people (mid-70s) that is concerned with the changes the government wants to put in effect...."

"All these years I kept [my paternity] to myself but after reading ... the news items I thought I would tell my wife (married 52 years), this hasn't gone well for her and myself. The last thing I wanted to happen was for my wife to answer the phone or door without knowledge of the situation. I pray that you continue to ask for non-retroactivity."

The following is from a biological father:

"In 1963 I was the father of a baby who was adopted in Ontario. When I was contacted to supply personal information about myself and family, I was reluctant to give this information. I was informed that the information would be strictly confidential, and would only be used for providing family health history for the baby, so I gave the information. I do not want any personal information about myself to be released to anyone. If this bill is passed, it will be an invasion of my privacy, and will be a breach of contract."

I'm going to read you just three more letters, from adoptees this time:

"I am an adult adoptee who was born and adopted in Ontario. I have lived all my 45-year life thinking about the decision to reveal my identity to my birth parents. I have known for some time it is not what I want, so I decided to keep my identity sealed.... So far, in my reading on the subject, yours is the only sane voice

advocating for those of us who will have our lives turned inside-out by this wretched piece of legislation.”

Another adoptee:

“I ... wanted to make you aware that there is a significant number of adult adoptees who would also have their right to privacy violated with this proposed act. Unlike those who lobby for complete openness ... we have no voice....

“I am an adult adoptee who is well aware of the current adoption disclosure registry, however, have chosen not pursue a reunion as a matter of choice.... I have very grave concerns that if [my birth mother] has the right to learn my adoptive name, she can still seek me out, regardless of a no-contact request....

“Please continue to question this legislation to protect all parties in adoption from such intrusions in their lives. Legislation should not be made retroactive, therefore breaking promises and legal commitments to the parties.”

Another adoptee:

“I do not wish to ‘be found’ by natural family members.... [a] contact veto will not work, requires me to file letters (as opposed to leaving records sealed), and even if they leave me alone, gives them way too much information about me.”

Another adoptee:

“I was adopted over 26 years ago by a wonderful family who I love dearly. I found out about adoption records being made public and I almost died! I can’t believe that the government would go out of their way to take away our right to privacy. Now it seems that we didn’t have a right to have a say in our adoptions, and now we won’t have a right to save our families from being hunted down from the very people who sent us away to begin with. I believe that an adoptee should be able to veto their records, and they stay that way until the adoptee decides differently.”

I’ve got letters from adoptive parents. I can’t read them all. This is a wonderful letter from an individual who implores you to “Halt this attack on thousands of defenceless families in Ontario who have adopted and been adopted with the clear understanding that our records will be permanently sealed and that we are free to lead our lives. We and the thousand of voiceless and defenceless adoptees and adoptive parents need the Legislature to amend this bill and to take out the retroactive aspects of this disclosure. I ask you and your colleagues to change the nature and content of the proposed bill.

“On behalf of my wife and family, thank you for your interest and compassion in this matter.”

It breaks my heart reading those things to you.

The Chair: Mr. Jackson, if I can stop you, has asked me—

Mr. Jackson: Mr. Chairman, if I may, I would ask for unanimous consent to grant the commissioner an additional 15 minutes. I will yield our five minutes for questioning if that will be helpful, but she has not finished and she is one of the only lawyers coming forward to this hearing.

The Chair: I have a motion. I will ask if we agree. Agreed. You have 15 more minutes.

Dr. Cavoukian: I thank you all very much.

The solution that I am proposing to the problem of retroactivity is simply to allow certain people to say no, to be able to withdraw their consent by filing a disclosure veto. Let me be clear: I am only talking retroactively, not from this day forward—once you pass the bill, everything is open—but going into the past when promises were made that are about to be broken. This would prevent the release of adoption information, again, only for past adoptions, prior to the passage of the new law. I believe this is an appropriate mechanism which will ease the transition to openness. It will still provide the vast majority of those who seek openness with the information they want, while protecting the privacy rights of the significant minority who literally are terrified at the prospect of such disclosure. And I assure you that is no exaggeration, as I hope the letters I have just read to you have demonstrated.

There has been some confusion in the House, I think, as to just exactly what privacy is. The most important aspect of privacy is control: personal control over the uses of your personal information; control over how one’s information is used and to whom it is disclosed. Freedom of choice is at the heart of privacy. Access to one’s own personal information is certainly an important component of privacy, but it is not the primary consideration. Control relating to the uses of your own information is key.

The government seems to have forgotten that there are two sets of interests involved here, two sets of privacy rights which at times conflict. You can’t just disregard one individual’s rights in favour of another’s. You can’t disregard the minority because of the opposing majority.

I want to tell you, there are many in the minority I speak of who simply cannot be present at a meeting like this, who cannot express their voices to you other than through people like myself.

The charter right to equality is more than just another ground for legal debate. Rights to equal consideration and respect are fundamental values in our country. They infuse the entire charter and they animate the hopes and aspirations of Ontarians at every stage of life.

As elected members of the Legislative Assembly, you have the opportunity and, in my view, the responsibility to look at these issues from a higher vantage. I ask you to infuse this bill with consideration and respect for all those affected by an era that is now behind us, an era in which adoption was often a veil and a mark of shame. Ameliorate that suffering. Allow all of those who have worn it for so long to choose the timing of their own unveiling. That is the essence of privacy: freedom of choice and control over the uses of one’s information.

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Canada’s federal privacy commissioner, Mrs. Jennifer Stoddart, in her submission to this committee has stated the following:

"The rights of the child should not be an unqualified right, because we must respect the rights of others, namely those of the birth parents.... Government has a responsibility to keep its word.... In this case, the information at play is absolutely some of the most sensitive information in our society, and it was gathered under the assurance of the utmost confidentiality....," as you have just heard in the letters I read to you.

"We cannot with the stroke of a pen rewrite the history of the lives of the individuals who trusted government to keep their birth records and adoption arrangements secret. Confidentiality commitments do not expire like patent protection." They don't come with an expiry date.

I would also like to refer to the words of my colleague Mr. David Loukidelis, the Information and Privacy Commissioner for British Columbia, who has also written to me on this matter. I will read a very brief excerpt:

"Our office [in British Columbia] has consistently argued since 1995 that a birth parent or adopted person who chooses to do so should be able to protect her or his privacy. An individual should have the right to decide whether to permit her or his identity to be available to an adoptee or birth parent as the case may be. This has been the law in British Columbia for almost 10 years and I would vigorously oppose any attempt to change it. To open adoption records completely by removing an individual's right to choose whether to protect her or his privacy would be unacceptable. It would also be a profound breach of the government's promise of confidentiality to birth parents.... I would vigorously oppose any effort to change the existing law in British Columbia."

I respectfully ask that both Mrs. Stoddart's and Mr. Loukidelis's submissions, and another letter that I will give you, from Dr. Alan Finlayson, be accepted as submissions to the committee.

Contrary to those who contend that parties to adoptions were not promised any confidentiality, I think there is clear evidence that certainly some people were indeed assured of just that: that their identities would remain private and confidential and that they would have no reason to expect that to change.

One birth mother advised me:

"These proposed changes would completely upset my life as it stands today.... I was told 20 years ago that my file was sealed and would not be opened without both consents.... I am feeling completely overwhelmed at what I may be facing in 18 months...."

I have dozens of these quotes that I can give you later from e-mails and phone calls. Numerous birth mothers have contacted my office literally in tears at the prospect of the disclosure of their identifying information, as have adoptees.

Adoptive parents have also informed us that they were told by the courts and children's aid societies that these documents and records would be permanently sealed. Surely all of these people can't be lying to us, making up these promises of confidentiality. How could anyone think such a thing? Although messages may have been varied over the years, there is clear evidence that many

birth parents and adopted persons were indeed given assurances of confidentiality and that those assurances governed their lives. They relied upon those promises; they believed in them. They believed in the promises made by previous governments. How can the current government just change all that, change the lives of so many people so dramatically? How could anyone trust any government in the future to keep its promises?

It's not just my personal view that it's highly unfair to apply the new rule of openness retroactively, breaking what to many was a sacred covenant. There are many others who hold those views on the question of retroactivity. I'll just quote from one. As law professor Ruth Sullivan states in the *Construction of Statutes*:

"It is obvious that reaching into the past and declaring the law to be different from what it was is a serious violation of the rule of law.... The fundamental principle on which the rule of law is built is advance knowledge of the law. No matter how reasonable or benevolent retroactive legislation may be, it is inherently arbitrary for those who could not know its content when acting or making their plans. And when retroactive legislation results in a loss or disadvantage for those who relied on the previous law," like these birth parents are doing, "it is unfair as well as arbitrary. Even for persons who are not directly affected, the stability and security of the law are diminished by the ... unwarranted enactment of retroactive legislation."

I submit to you that Bill 183 is especially unfair and arbitrary because of the extreme sensitivity of the personal information it will retroactively permit to be disclosed, contrary to the wishes of many of those involved. But again, there is a simple solution to set this straight in the form of one amendment I'm seeking: Amend the bill to include a retroactive disclosure veto for adoptions that occurred prior to the passage of this legislation. That simple act alone would greatly minimize the potential for harm and correct this grave injustice that is about to be perpetrated, and that is exactly what they have done in other jurisdictions.

I'm going to refer very briefly in a moment to the only three provinces in Canada that have retroactive legislation for adoption disclosure. There are only three; all the other provinces and territories in Canada have adoption disclosure legislation that is either going forward from this date in time or has relied on the mutual consent of both parties. Consent always factors into it. British Columbia, Alberta and Newfoundland are the only provinces that have legislation that is retroactive with respect to adoption disclosure, and each of those has a disclosure veto that allows some people from the past, like those you've just heard from that I've read to you, to say no to the disclosure of their information. And very few people use that. Only 3% to 5%, in British Columbia and Alberta, have exercised the disclosure veto. So the beauty of it is, you can enact this bill, you can have a disclosure veto that protects a small group of minority rights, but a large number of files will be open and your goal will be achieved; your goal of openness will be achieved.

One of the most fundamental values in Canadian society, recognized by the Supreme Court of Canada, is that all persons and minorities are “recognized at law as human beings equally deserving of concern, respect and consideration.” I accept that the current system of secrecy has had negative emotional and psychological impacts on those seeking information about birth relatives; there’s no question. That’s why I support the trend toward future openness. But that doesn’t abrogate the rights of birth parents who were promised that their records would remain sealed.

Prior to November 1, 2004, Alberta had an adoption disclosure system that is very similar to the system that Ontario currently has in place. In a recent case—2004—an adult adoptee who was denied access to her birth registration information challenged the legislation on the basis of discrimination under Alberta’s human rights legislation and subsection 15(1) of the charter. The legislation was nonetheless upheld. In upholding the law, the Alberta Court of Queen’s Bench stated that it did so in part because of a pressing and substantial objection, namely “honouring the assurances and expectations of privacy or confidentiality on which birth parents have relied.” The court also stated that the alternative of a contact veto would fail to honour those assurances and expectations. Finally, the court stated that the legislation did not violate the United Nations Convention on the Rights of the Child. They did an extensive examination. I urge you to refer to this case, of which I will gladly make copies available to you.

You have to be made, hopefully through me, fully aware of the emotional and psychological harm that will fall upon many parties from the retroactive application of the law. In my view, it’s hard to escape the conclusion that the current bill is already having the effect of re-stigmatizing a significant minority of birth mothers and adoptees as being unworthy of equal concern, respect and consideration. Bill 183 accords no consideration to those birth parents who want or need to assert their right to privacy, which they deserve and have relied upon for so long. Similarly, it accords little consideration to adult adoptees seeking to maintain their privacy.

You might again ask, “Why haven’t these people come forward? Why aren’t they here?” You know the answer to that. Those who have been relying on past assurances of confidentiality, who strongly oppose the retroactive nature of the bill, are very hesitant to come forward and speak on this issue for fear of being identified. That’s what they are trying to preserve: their privacy, their confidentiality. They must remain invisible. And they don’t have organized groups. There aren’t organizations who can file submissions, who can speak on behalf of the bill, who can appear here, who can write to MPPs. These people are scared to come forward. They have been terrified, in writing to me. I’ve severed all their names, if they’ve identified themselves. Many have contacted me anonymously. They’re very, very frightened individuals, and that is why I’m here on their behalf.

I’m also well aware of the existence of the contact veto. I’m not convinced that it will be effective, nor are many of these individuals. I can give you examples of other jurisdictions. But I have to quote, and I hope you bear with me. In the words of the Honourable Norm Sterling in the House—I have to quote him; he doesn’t know I’m quoting him—“They say that, to a person who contravenes the [no contact] sections of the bill, there could be a fine of not more than \$50,000. Well, who’s going to prosecute either their natural mother or their natural child? It really is a hoax. The non-contact provision in this adoption bill is a hoax.”

1700

I couldn’t agree more. It’s pure fiction. I don’t know if you recall, but many of the individuals who I read from said the exact same thing: It’s not going to happen.

Others have suggested that a contact veto alone will not be enough, especially for those individuals who live in smaller communities. One adopted person, an adoptee living in a small, rural community and whose birth mother has been conducting a search is very worried about being watched and contacted. She wrote to me.

This adoptee said, “[You] can do a lot of things without having ‘contact,’ such as driving past my house, and watching me from a distance. I shouldn’t have to look over my shoulder for the rest of my life.”

She doesn’t want to be contacted; she doesn’t want anyone to see her; she doesn’t want anything to do with this.

To summarize, both birth parents and adoptees involved in adoptions that occurred prior to the enactment of this legislation should have the right to prevent the disclosure of their identifying information by exercising a disclosure veto. That is the only amendment, ladies and gentlemen, that I am seeking. In my submission, I have given clauses extracted from the British Columbia, Alberta and Newfoundland statutes, which have disclosure vetoes, and we’ve also drafted a clause for your consideration and possible use in Ontario.

The experience in these provinces that I mentioned is that the vast majority of birth parents and adopted persons in Ontario will not file disclosure vetoes. There are low rates of exercising that option.

I also want to highlight that where a disclosure veto is filed, I fully support the provision of anonymizing, non-identifying medical, genetic and family history information being made available. I would be happy to work with the government to develop such a system as this.

In conclusion, the retroactive application of the disclosure provisions contained in this bill is an unacceptable and unfair encroachment on the privacy rights of those birth parents and adopted persons who were assured that identifying information would remain confidential; it’s just wrong. I’ve heard from many of these individuals, they’ve touched my heart, and I’m speaking out on their behalf. They are begging us to change this situation, to correct a wrong before it’s too late.

A disclosure veto for past adoptions is imperative to ease the transition to an open disclosure scheme and to

preserve the privacy rights of those who were assured that their confidentiality would be protected. To do less than introduce a retroactive disclosure veto would be to ignore the wishes of an entire segment of society: birth parents and adopted persons who were once promised privacy, who still want it and who have governed their entire lives according to that assurance.

In the words of the Alberta Court of Queen's Bench, "If either extreme wins, real people lose."

I thank you very much, ladies and gentlemen, for your time. We'll be glad to answer your questions.

The Chair: Thank you, Madam Commissioner. You went just above the 30 minutes, so there's no time for any questions. We thank you for waiting and expressing your views and the views of other people on the matter.

At this time, we have five minutes each for comment—

Interjection.

The Chair: That's fine. So there's none.

The first deputation would have been from the Canadian Council of Natural Mothers. They asked that we place them tomorrow.

PARENT FINDERS

The Chair: The next one will be Parent Finders.

Ms. Churley: Just a clarification: Karen Lynn had to leave because she was scheduled for 5, and I just want to be sure that everybody agrees that she can be on at 6 tomorrow. Is that agreed?

Interjection.

The Chair: Agreed. Thank you.

Ladies, you can start at any time. There's 10 minutes total, including questions, if there's time.

Ms. Patricia McCarron: My name is Patricia McCarron. I am president of Parent Finders, National Capital Region. We are a support group and a volunteer organization that helps people reunite after an adoption. We were incorporated in 1976, and since that time we have assisted over 1,200 members in contacting and reuniting with birth relatives. We have a database of over 12,000 entries, and we're part of a larger national organization, Parent Finders National, on whose behalf I am also speaking. We publish a regular newsletter, we hold public meetings and we deal with adoptees, birth parents, adoptive parents and fostered adults on a weekly basis. Ms. Cavoukian was speaking for those people who wrote in to her. I'm speaking for our members and for the adoption community.

As president of this organization, I'm here today to speak for those who cannot attend. Over 26 years we have heard from these people in terms of promoting adoption disclosure reform. We advocate the right of access to identifying information by all adult members of the adoption triangle and we believe that existing adoption legislation needs to be reformed.

There are a few issues that are not addressed in Bill 183 that are of concern to us: retroactivity, access to non-identifying information, the importance of the contact

veto and providing an adult adoptee with the name of his or her putative father.

The retrospective argument has also been raised by the privacy commissioner. The promise that a birth parent would never have their information revealed is simply—you just have to understand that you can do these things without violating their privacy. You can contact birth families. You can contact birth mothers. We do it on a daily basis. You do not publish this information on the front page of the *Toronto Star*. You are doing this one on one, discreetly. We do it; we know how to do it. It is not a matter of making the information known to the public.

In fact, until the 1960s, adoption orders—my adoption order has my full birth name on it. There's no confidentiality. My birth mother had a very rare German name. It was not a hard thing to find her.

I'm going to skip through—you can read through all my arguments.

On a personal note, I do not need this legislation. I have been reunited for 14 years. I have been involved in this organization and I've stuck to this cause—never believing that I'd be lobbying for the next 15 years of my life—because I believe this legislation needs to be changed.

I met my birth mother in 1991 through the help of Parent Finders. She and my adoptive mother met once. They thanked each other basically for the role each played in my life. I think I'm a typical, successful adoption story. I'm gainfully employed, well educated and bilingual. I'm married and have two wonderful daughters. This legislation also affects my kids. They are as much a part of this process as I am.

My birth mother was very receptive when I first contacted her. She was sexually assaulted. For all the cases that Ms. Cavoukian has read, I'm here to tell you that someone who is born of rape can go on to lead a very normal life. I'm an adult. It wasn't the story I was looking for. It wasn't the perfect happy ending. However, I can deal with it. I can get on with my life. I can have a relationship with my birth mother. As traumatizing as it was for her at the time—and it still is today—it's OK. We can deal with this. There are support systems out there to help people deal with this.

We're always warned by well-intentioned family and friends, "What if it's rape? What if it's incest? What if it's this and that?" or my favourite: The birth father is always an axe murderer coming to get you. We expect the worst. That is what we are told. So whatever little bit of information we get, whether it's just our name, whether it's just a little bit of background information, we're so pitifully grateful for every little bit we get, and then when we finally do get the truth, it's very fulfilling and very revealing.

I'm here today to ask you to help right a very social wrong. The system has been set to default to secrecy, and I'm asking that you switch that over to openness. That's where it has to be. Thank you.

Ms. Monica Byrne: I'm going to try and be as fast as possible. Ms. Cavoukian got half an hour; I'd like a little more than four minutes.

I'm the birth mother she is defending so eloquently. I am the birth mother she's talking about. I gave birth to a child in Ontario in 1966, so I come from those days of secrecy, privacy and all the other stuff that was associated with being a birth mother then.

I was forced through this system to have to crawl and grovel to get information and find my daughter on my own. She knew nothing about adoption registries and all the other government systems. She would never have come looking for us. I married her father. I have three other children, her full siblings. We have a very positive reunion. We have the picture-perfect reunion. I like her mother; her mother likes me. We are not in a competition. This girl is both our daughters. It's normal and OK, and we're mature about it.

Since that time of finding her 18 years ago, I have worked with birth mothers. Again, when I hear the red herrings and the fearmongering that Dr. Cavoukian has spread across this province since the introduction of this bill—I know about the 81-year-old birth mothers. I've contacted them. I have been contacting over 1,100 reunions. I know what birth mothers are doing. I'm one of them; I know how to approach them. I feel it very inappropriate to read anonymous letters when I put my name out on the table. This is personal information for me.

1710

I was never offered confidentiality; I had it imposed upon me by a system. I never signed anything, I never requested it and I've never met a single birth mother, in the 18 years that I've worked in this, who asked for this kind of imposed confidentiality. No one wants his washing out on the public lawn. Everyone would like some level of privacy, but most people would like to know what happened to their children. The contact veto in this bill will protect those people. In all my years, in other jurisdictions where there is a contact veto, I have never known of people having abused that veto.

People are very disenfranchised in the adoption community. They are extremely nervous about contacting anyone. Many adoptees and birth parents know the names of the people they're looking for but do not make a move. The idea of someone knocking on your door 40 years down the line is not a reality. Those documents that we are talking about releasing only show my maiden name and address 40 years ago. In the interim, I've married, I've moved; everything's changed.

It isn't just that you get your papers and you go knock on the door. It doesn't work that way. We believe that with careful advice and guidance, people can be helped to find each other in a reasonable and civilized manner. All the red herrings in the world cannot change that truth. In England, records have been opened since 1976. It's OK, folks. It really does work. We can do it.

We've made a pathology out of this subject. This is a very normal process. These were only babies; it wasn't the plague.

The Chair: There's about a minute and a half left: 30 seconds each.

Mr. Ernie Parsons (Prince Edward–Hastings): That was very well done.

Ms. Churley: There's no time, but thank you for your presentation. I think a key point for me is that, with modern-day technology and people finding each other through other means, the irony is that within this bill there's at least a contact veto, whereas right now—

Ms. Byrne: As it stands, there is nothing.

Ms. Churley: Exactly. I could have knocked on my son's door when I found him. There was no remedy. More and more people are finding each other anyway, and now there will be a remedy. But of course, as you said, I didn't go and knock on my son's door.

Ms. Byrne: The contact veto will protect people. As it stands now, you can go and find anyone. As I said before, if you have a very odd name, it doesn't take long to go through everyone in the phone book and phone all those relatives you didn't want to know the truth and the private stuff. With a contact veto, you can at least indicate that you don't want to be contacted.

The Chair: Thank you very much for your presentation.

PHYLLIS CREIGHTON

The Chair: We are moving to the next presentation. Phyllis Creighton, please. You also have 10 minutes, madam.

Ms. Phyllis Creighton: Thank you for the privilege of speaking with you. I am a historian and ethicist, a mother, a grandmother and a wife. I've been thinking for many years about what it means not to be able to know your roots, ever since working on my 1977 book on donor insemination, and when wrestling with issues of anonymity and secrecy in the use of donor gametes on a committee of Health Canada that helped draft legislation on assisted human reproduction.

You have to grasp the facts in a complex problem for ethical reasoning. You must weigh the needs and interests of those involved in a potential conflict, and weigh them fairly. The historical context must also be understood. The values being implied must be clear and appropriate to both the situation and the policy. Here are my understandings and values.

Adoptees and birth parents both have needs for a personal identity, love, a family, a network of supportive relationships, respect for themselves as individuals and for their rights as human beings.

Birth mothers who surrendered their child did so for many reasons: social pressure because they weren't married, youth, lack of resources. For some of them, what may be at issue with disclosure is their social image: Who they seem to be is not wholly who they are. Story, status and reputation are in play. Privacy and

maintaining life unchanged is of real concern to some of them.

But the social context has radically changed over the past half-century. Single moms were shunned back then. They had transgressed social rules of chastity, of marriage as the only basis for bearing a child. With the sexual revolution in the late 1960s, this norm has been largely set aside. The acceptance of common-law relationships, donor insemination of single women and the ability of separated or divorced wives to raise their children on their own: All this has removed the stigma from single motherhood to a large extent. Bearing a child outside marriage does not matter in the way it did.

In my experience, people want to know where they come from and who their kith and kin are. Curiosity about where one's traits came from seems instinctive. I think one's identity and the meaning of one's life hinge on knowing one's parentage and on having a historical family framework. Knowing your history grounds you in this fast-changing, bewildering world. Roots are a need today. Witness the people searching provincial archives for their family tree. Knowing your family's genetic and medical history can also be of life-saving importance. Why wouldn't adoptees have all these human needs?

Who we are is tied to who we came from. Nurture shapes us, but on the basis of nature, our genetic and biological individuality. Where our own nature came from is of greatest significance to us, whatever right to that information or concern our birth mother may have. It is discriminatory that the state should have such information but keep it from adoptees. By what moral right?

As for my moral weighing scale, love, the will to seek the good of every person, is my overriding value. In policy-making, this translates as justice—fairness in treating individuals with conflicting interests—tempered by compassion.

In light of these understandings and values, I have from the start supported openness and honesty with respect to birth origins. I think people have a right to know who their birth parents were, including their names. Such knowledge is an important element of a secure identity.

For a birth mother, the information about her bearing of a child is one part of her life, not its core. Privacy may matter, but being deprived of this information is a central wound to the very being of her child. Furthermore, for many birth mothers, open records and access to birth information for their children is a real value. Their need and desire for information themselves, and for the possibility of contact, also weigh heavily in the balance for policy-making.

I think we've had the issue of privacy being respected dealt with already, so I'll skip over that paragraph. Kindness, compassion and concern for a birth mother's dignity can explain why a promise might have been given, but by what right?

For a woman, giving birth may be a momentous experience, but it is not the essence of her person. It doesn't have the significance that it has to the one born,

who will live for all time with the biological link to her. If love and compassion are to be upheld in applied justice, they point to giving the one born the information about birth origins. Honesty is the foundation for trust, and it is a key principle in our society.

There is no way to ascertain the factual truth of what number of adoptees have an absolute need to know their origins—it might be small or large—but the rightness or wrongness of an action is not decided by numbers. It is clear that knowing your origins is desperately important for some adoptees. Their need is humanly understandable, and it cannot be met unless adoption records are opened in the manner that Bill 183 provides for.

1720

It goes beyond other legislation, a sign that it is ethically sound. Putting the child's best interests first has slowly, over the past half-century, come to be accepted in society and in law. You can look at my references to the UN Convention on the Rights of the Child and read legal comment on it; you can look at the Universal Declaration of Human Rights, which also provides for equality for everyone, without distinctions of birth or other status. It must be remembered that Canada is a signatory to these international legal agreements and has obligations.

When open records and access to information at maturity are established as the legal right of adoptees in future by passing this bill into law, what ethical principle could justify continuing to make second-class citizens of those already adopted? Today's adoptees would rightly have an even greater sense of grievance and despair at such a discriminatory application of moral principles, which would deprive them of hope.

Birth parents also have a right, ethically, to information about the child they surrendered for adoption. It is a serious moral issue that birth parents often have their names linger on the registry for many years while they wait in despair for information about their children.

Justice, compassion and love all dictate and validate, in my opinion, the provisions in Bill 183 for information-sharing.

As an ethicist and a mother, I think it would have been better, however, to rely on normal human restraint and responses to a mother's lack of desire for contact rather than on no-contact stipulations with penalties attached. It is hard to see a moral basis justifying such a provision. When one becomes a mother or father, the lifetime reality, the creation of a child, inescapably creates life-long responsibilities. Surely acknowledging the reality of the procreation of the child is only part of that responsibility. I leave to policy-makers to justify on an ethical basis their limitation of that responsibility to exclude a duty to allow contact even where it is vital to the adoptee. Such deprivation can have grave consequences: suicidal ideas or action, mental disturbance, and, I note, inability to learn of late-onset medical conditions of genetic origin, information that can be essential for early diagnosis and lifesaving.

I live in hopes for growing imagination, trust and better human relationships. May Bill 183 serve these ends.

The Chair: Ms. Wynne. Thirty seconds each, please.

Ms. Wynne: Phyllis, it's nice to see you. I have a lot of respect for your wisdom.

I need your advice on how to respond to an adoptee who not only does not want to be contacted but doesn't want disclosure, because you were making the argument for the rights of the child. What about the case where there's a child who doesn't want disclosure?

Ms. Creighton: If there are reasons to fear violence—there is a clause in your bill that says there might be exceptional circumstances, and we all would understand that if violence or abuse or something truly dangerous might occur. There are moral exceptions. To every good rule, there can be a case made where justice and compassion and love would dictate a deviation.

The Chair: Ms. Churley?

Ms. Churley: Thank you for your presentation.

The privacy commissioner read some letters into the record and talked about the possibility of suicide of some birth mothers who may be found. It's my understanding—and I don't know if you wrote about this in your book—that there's a very high rate of suicide within the adoption community, higher than in the rest of the community. I guess what I'm trying to say is that when you start making those kinds of arguments, you get into the whole emotional quagmire of who's at more risk. I don't know if you covered that at all, but on both sides there are—not knowing your identity is a major, major issue with people, as I understand it.

Ms. Creighton: I wrote about artificial insemination by donor, not about adoption, and I think that we can't save everyone. It is a grave issue, and we right what wrongs we can.

The Chair: Thanks very much for your presentation.

DENBIGH PATTON

CLAYTON RUBY

The Chair: We will move to the next one. Mr. Patton.

Mr. Denbigh Patton: I do have a presentation. I've kept it short, but there is a part of it that I think could be much better expressed by my counsel, Mr. Ruby, and I've asked the clerk if he could please speak first.

The Chair: Please proceed, sir.

Mr. Clayton Ruby: Thank you, Chair. This is a debate that engenders very strong feelings, and I don't want to fan the fires, which are strong on both sides, and I can understand both sides, as I suspect many of you can. What I want to do, though, in the context where for many people, perhaps most people, automatic disclosure is great for them—there are some for whom it is tragedy, and my clients, plural, are a part of that group.

I don't want to repeat what Ms. Cavoukian said. She is an independent, impartial figure. She's one of the most important people in our governmental structure, broadly understood, and her analysis is thoughtful and careful, impartial and independent, and I agree with it. So what I want to tell you here is not that she's right, because

you've heard it from her, not that it's needed, because I think you all know that too, but why it's required. It's required because the Constitution of this country in its Charter of Rights requires it, and let me explain that as simply as I can.

There are three aspects of it that are important. First, the Constitution guarantees fundamental justice and what's called "security of the person." I see there's a lawyer or two nodding—I hope not nodding off. A recent Supreme Court of Canada case, not coincidentally called "Ruby v. Privacy Commissioner," made it clear that it was not every government record that was entitled to be called part of the security of the person which you have a constitutional right to protect. It was only those intensely personal records of a nature they decided not to specify in general which qualified, but if these records are not intensely personal, then I doubt that any government records are.

Second, the right to privacy is guaranteed in section 8 of the charter. It's not there in words, but the Supreme Court of Canada and dozens of courts have said, "It's part of the search and seizure protections," that there was a generalized right of privacy vis-à-vis government for all citizens. It may be broader than the kinds of privacy we usually concern ourselves with, but that's not important today. Clearly, there's a privacy right created by previous legislative schemes where people had an expectation that this kind of information, in some cases barring exceptional circumstances, generally speaking would be kept private. That creates a right of privacy.

The third aspect is section 15, equality rights. There has been discrimination against mothers who gave their children up for adoption and children who were the product of adoption. That is lessening, as it should, and this bill is one important step in that progress. But as recently as 2004 the former Alberta legislation was before a court in a case called Pringle that the commissioner talked about. Pringle's was a Queen's Bench decision out of Alberta, and they sustained a mandatory non-disclosure provision in their old legislation. No one ever got to look at adoption records. They sustained it largely because that legislation, and I'm quoting, "was in pursuit of a pressing and substantial objective. I"—the judge said—"identify that sufficiently important objective to be the honouring of the assurances and expectations of privacy or confidentiality on which birth parents have relied." So the law has recognized privacy not only on its own, but also in this specific context: birth records.

Ms. Cavoukian pointed out—and it's on page 8 of her submission, if you still have that in front of you—that in British Columbia, Alberta and Newfoundland there is retroactive legislation similar in structure to this, but even in those provinces there are disclosure vetoes for the parties.

If the government enacts this legislation—and I am retained to challenge it if it does—I am going to court if this does not pass with the amendment that Ms. Cavoukian says is wise and that I say is required. The court is going to say, "All right. It's an infringement of section

15, the same as it was in Alberta. It may be an infringement of security of the person if Ruby's right. It may be a violation of the privacy right, if he's correct. Can we justify it? Can the government justify this infringement?"

1730

When you can look to three provinces, the only other three that have dealt with it in this way, and say that they all thought it necessary to put in this safeguard of a disclosure veto, then my submission to you is simply that the court is not going to allow it to stand without that protection for the minority who want their privacy protected. It's really required. As she points out on page 9 of her material, the numbers are small. In Alberta, under the new legislation, 5% of those who can file a disclosure veto did it. In British Columbia, it's about 3%. But let me assure you that it is vital for those people. You can't pass legislation that disregards the rights of such a large group.

A contact veto is much like the stalking laws, the criminal harassment laws. We have them on the books, but each of you in your riding office has heard cases, as I do in my office regularly, of women who say it doesn't work. The police can't enforce it; there's not enough manpower. No one can track down the anonymous phone calls, the late-night visits. That's not an adequate substitute for what privacy is. Privacy is the right to choose whether information about you gets disclosed or not, not just to the world but to anyone other than yourself.

That's my legal submission. I'm grateful for the time. My client may have some words he wants to add if there's time available.

The Chair: Two minutes, if you wish to.

Mr. Patton: My original presentation was about five minutes; my counsel has covered a great deal of it. I think I'd really just like to go on record, as an adoptee motivated enough to hire very capable counsel to help me here today, as saying that the bill purports to empower adoptees. The press release by the minister, in bringing the bill, said that we have to move into the 21st century, that secrecy is archaic and that it's all about empowering adoptees.

I'd like to be empowered, please. I am an adoptee who has spent well over 40 years knowing that I was adopted, carrying with me the decision about whether and when I might expose myself to my birth mother, my birth father or their relatives. I've always known it to be my decision; I take it seriously. I can't possibly come up with words to describe to you how it feels to learn that one day soon, as a result of this process, it may simply not be my decision to make. It is not an exaggeration to say that it is part of who I am: how I have made this decision in the past.

I'd just like to close by saying that I bring with me a really deep respect for those people who have different feelings about their adoption and different feelings about what they want to know or whom they want to be known to. I think that the basic purposes of this bill—to comply with the UN's requirement that everyone should know their birth information and to empower adoptees to obtain that information more quickly than they currently

can—are truly honourable purposes, and I support them wholeheartedly. However, the bill, without a disclosure veto available to people like me, I'm sorry to say, would be much worse than the status quo.

The Chair: Thank you very much for your comments. There is no time. We thank you both for your presentation.

FASWORLD CANADA

The Chair: We'll move to the next presentation, FASworld Canada.

Mr. Jackson: Mr. Chairman, as the deputants are assembling, may I ask research, through the clerk, to contact the minister? We have not received any legal opinions that the government may have received with regard to this legislation. This matter has now been raised in committee. Without debate, I'd just have that information sought for the benefit of the committee.

The Chair: That will be done.

Ladies, you can start any time you're ready.

Ms. Bonnie Buxton: I'm Bonnie Buxton, president of FASworld Toronto. This is my daughter Colette, who is an adoptee and a survivor of a fetal alcohol spectrum disorder, FASD. I'd like to thank you for giving me the opportunity to speak out on this important issue.

Our organization works with families of children with suspected or diagnosed fetal alcohol disorders. Most of these youngsters—in fact, nearly all of them—have been adopted.

I am the adoptive mother of two young adult women who are not related by birth. They have quite different problems, which were given to them before they were born.

I'm also a journalist and author of the book *Damaged Angels*. I will submit this book to the committee, because it's important that you understand adoption currently in the context of fetal alcohol spectrum disorders, FASD, which may affect 70% or more of children adopted through child protection agencies in Ontario.

Youngsters with FASD have permanent neurological damage which affects learning and judgment. They are at high risk of dropping out of school early, becoming addicted to alcohol and drugs, getting into trouble with the law, becoming unemployed and homeless, and bringing more alcohol-damaged babies into the world. Diagnosis of a fetal alcohol disorder can reduce these risks, provided proper support is given to these children by families, schools and the greater community.

I'm also submitting a copy of the current Canadian guidelines on diagnosis of fetal alcohol disorders, because without confirmed information regarding the birth mother's consumption of alcohol in pregnancy, a diagnosis cannot be made.

My older daughter, Cleo, is 27 and has very little desire to meet her biological parents. Both had psychiatric problems. She has had to cope with her own seasonal affective disorder, chronic depression that worsens in the winter. Cleo doesn't know what she will find if she meets

them. I'm not sure, though, that she wants a permanent "no contact" or "no disclosure" on her records. She feels that down the road she might feel strong enough to cope with meeting one or both of them.

Colette, who's 25 and who came here with me today, has experienced invisible problems with learning and behaviour, which worsened as she grew older. We did not know that these problems were caused by her biological mother's drinking in pregnancy, although we had been informed that Colette was removed from her biological family at the age of eight months because of their alcoholism, fighting and neglect.

After consulting numerous doctors, psychologists and psychiatrists, all of whom told us we should improve our parenting skills, I saw an item on TV and instantly recognized that she was struggling with the effects of prenatal alcohol. She was 17 at the time, sliding on to the street, addicted to crack cocaine. Eventually we were able to find a geneticist who confirmed that she has alcohol-related neurodevelopmental disorder, ARND, a form of FASD.

To obtain that diagnosis, we needed confirmation of exactly how much her birth mother had drunk. Getting that information was virtually impossible under the legislation in 1997, and we managed to acquire it only by a series of very weird coincidences, which are outlined in my book. Without those coincidences, we might still be looking for answers, and she might be still on the street or dead.

Back in the 1950s, as Phyllis Creighton outlined, young, pregnant women were generally spirited away to "help their aunt" and came back a few months later. That hidden shame and pain stayed with them forever. But that has changed with the sexual revolution, as you know. In the past 30 years, most children adopted in Ontario have been removed from dysfunctional families as infants, placed in foster care, and then made crown wards. Both of my daughters came from these kinds of parents.

As I mentioned earlier, my older daughter is afraid of what she might find. This new legislation does not seem to provide for the non-identifying information currently offered by children's aid societies. Because this information is critical in assisting an adopted individual in making a decision about whether to proceed with a reunion, I strongly recommend that the new legislation ensure that this service continues in some form. As well, not having the support of a reunion social worker, which is currently being offered by the adoption disclosure register, could be a grave disservice to Cleo and her fragile biological parents if one or both of them managed to track her down.

1740

A recent screening in Alberta indicated that 50% of foster children and 70% of crown wards—youngsters available for adoption—are affected by FASD. Confirmed information regarding the birth mother's consumption of alcohol in pregnancy is needed to get a diagnosis. If that child is six, 12, 15 or even 30, this information is not available in the proposed legislation. I

don't believe that this legislation offers an emergency search on medical grounds either. A caring adoptive parent of a minor will need this provision in order to obtain a diagnosis so that her child can access support from the community. Again, a trained social worker may be necessary in order to obtain accurate information. The normal response of a biological mother when asked, "How much did you drink in pregnancy?" will be, "I didn't drink," no matter how much alcohol she may have consumed.

As I understand it, the proposed legislation does little more than provide birth registry information, and not names of kinfolk. As many people are not listed in phone directories these days, tracking down biological parents is going to be extremely difficult. For example, Colette's birth father is not listed in the phone book, so I don't think we could find him today without a whole lot more background provided by an agency.

In short, I welcome legislation that removes the stigma of adoption and reduces bureaucratic red tape for those individuals seeking reunions, but I am concerned about the loss of the adoption disclosure registry as a resource for individuals and families who can't find this information on their own or who require the support of a social worker during the reunion process. I'm concerned about the loss of non-identifying information for adoptees prior to making a decision about being contacted or seeking contact. I'm particularly concerned about families of minors who require specific information regarding the biological mother's use of alcohol in pregnancy, as alcohol-affected children likely make up the majority of Ontario children adopted in recent years.

I would be pleased to consult with the committee as this legislation is fine-tuned to meet the needs of today's adoptive parents and the most vulnerable people of all: adopted children of all ages.

The Chair: Less than a minute each.

Ms. Churley: Thank you for coming forward. I just wanted, because it's such short time, to point out that you've identified two of the biggest problems with the bill. My bills actually dealt with these. The first is giving one right, the right to the original birth information, but no remedy or provision for the so-called non-identifying information. I've spoken to the minister about that, and I'll be putting forward an amendment. Perhaps the government will as well. Also, in my bills, we took away mandatory counselling but provided optional counselling. Those are two very important pieces that we need to find solutions for.

Mr. Sterling: I congratulate you for coming, Colette. I appreciate your being very brave and courageous in coming before us.

I agree with you as well: What we should be looking at in this bill is allowing more free access to medical information in a very timely way. I agree with the privacy commissioner in that regard. That's where we should be focusing our efforts.

Ms. Wynne: I just want to thank you very much for coming forward, both of you.

The Chair: Thank you. Enjoy the evening. I'm sorry if you had to wait a little longer than expected.

NICKI WEISS

The Chair: The next presentation is from Nicki Weiss.

Ms. Nicki Weiss: I think I gave you copies of my presentation, so I'm just going to read it.

As an adoptive parent, I am in full support of Bill 183. In fact, I think this bill is long overdue. I have two sons, both adopted at birth. When my eldest son, Lee, at four years old, asked me if his birth mother was dead, I replied, "No." "Well, then," he said, "why can't I see her?" I had no good answer. I wrote letters to his birth mother, Anita, via our lawyer, asking her if she would consider making our relationship more open.

When Lee was six years old, she was ready, and I am very grateful for his birth mother's courage. When Lee was seven years old, Anita and her husband were pulling out of our driveway after a visit. Lee said, "Wait a minute. I have to get my jacket." "Where are you going?" I asked. "I'm going with her. She's my real mother."

Open adoption is not without some confusion and issues. I explained to him that adoption is forever, that this is what Anita chose as best for him, and that we are the family he lives with. I explained that while he doesn't live with his grandparents or aunts or uncles either, they are part of our family and love him. We have that same relationship with Anita. Lee was able to accept this, and the issue was resolved.

This morning, I asked Lee, who is now almost 15, what he would like you, the attendees of this hearing, to know. He replied with no hesitation, "I want them to know how important it is for me to have both my families. I love you both. If I didn't know my birth mother, I would think about her all the time. I would worry. I might even be frightened. I might wonder about her obsessively, but I hardly ever think about her, because I don't have to. I'm glad I know who I look like. Her parents always tell me every time I see them. I want you to tell the committee that having a relationship with my birth family is not confusing. They are my relatives, and I need them in my life for me to be happy. If I wasn't able to know them, I might become crazy." There you have it.

Lee is a well-adjusted, bright, high-functioning, emotionally stable person. His struggles are a normal kid's struggles without the added stress of a phantom family. So far, he is a person who is integrating all parts of himself so that he is comfortable in his own skin. I would be surprised if Lee ever became a drain on our mental health system. I believe that our open relationship with his original family positively and profoundly contributes to his positive and confident outlook on the world and helps our family function normally.

Let me back up and tell you how our family got to this place. Before my husband and I adopted, we thought long and hard about the kind of relationship we wanted with the birth family and about the kind of information I

thought our kids would want. Common sense told me that information—good, bad or neutral—was preferable to no information, and that identifying information, preferably with some sort of communication with the birth family, would make the most sense for us.

When I heard about the incredible frustration experienced by adoptees and birth parents, the disrespect shown toward those searching for their original families, and the long wait time in trying to get some information through the adoption registry, I was appalled. It made me sad to think that our government might deny or make it difficult for my children to obtain information about themselves that is rightfully theirs. People can deal with what they know, no matter how painful the information. They cannot deal with what they don't know. So my husband and I decided to go the private adoption route in the hope of circumventing the hassles of the adoption registry. Obviously, we were successful.

Adoption is a normal and common way to make a family. I am unwilling to buy into the barriers, like the barriers to information or the barriers to access, that people put in our way for our own good. These barriers promote adoption as abnormal, as somehow shameful. This in no way describes my outlook. I see adoptive parents and birth parents as family. I do not feel threatened by my children's birth families. I have enormous respect for the difficult and courageous decisions they made.

I see my children's birth parents as our in-laws. As in any family, adoptive or not, you don't choose your in-laws, you may or may not like them, and you both love the same child. Some families get along with their in-laws; some do not. In the end, it doesn't really matter. What does matter is that the children have unimpeded access to information about both families. It does not make sense, because one family in the triad might be nervous about the other's existence, to deny individuals their basic need to know about their origins and the freedom to choose whether or not they want to become involved with each other.

When you look at families today, you often see kids with two, three and four sets of parents: stepfamilies, blended families, half-brothers, half-sisters, and so on. These kids have unimpeded access to information just by the mere fact that they were born into their families. Their parents, wherever they might be in that chain, also have access to information and access to each other. All they have to do is ask. The complexities of these families, while challenging, are normal.

Adoptive families belong to this same group of complex, challenging and normal families. We are asking the community and the law to also see it this way. I urge you to amend the law in favour of easy access to information.

1750

The Chair: Thank you, madam. There is about four and a half minutes. Mr. Arnott, do you have any questions?

Mr. Arnott: Thank you very much for your presentation. I have no questions.

The Chair: Mr. McMeekin?

Mr. McMeekin: Thanks very much for your presentation. I'm by training a social worker who's done some family counselling. I just want to pick up on what I think was the general thrust of your presentation. I've heard it elsewhere: that there can be a pathology involved in this whole dynamic of adoption, and that often that pathology, from my limited experience with issues like this, can potentially be exacerbated when people are denied information about their past.

Somebody said earlier that there's an assumption by someone adopted that "My dad is an axe murderer," or a serial rapist or whatever. In the absence of the ability to ascertain a more truthful perspective, one goes through life always believing the worst about themselves. Is that part of what you're trying to say to us?

Ms. Weiss: Yes. I believe that if you don't have information, you can catastrophize to the worst. You can create a fantasy world that you start living in, and that really doesn't help. People are people, and most people are not axe murderers. Most people are just regular people trying to get on with their lives. When you don't have access to information, you make up all kinds of stuff and then make decisions about your life based on that made-up stuff. I think it makes people crazy.

Mr. McMeekin: I appreciate your sharing a real story with us today.

The Chair: Ms. Churley, you have a minute and a half.

Ms. Churley: Thank you for coming forward again; I remember the last time we had hearings on one of my bills. The chord you struck with me was that after I found my son, we found his birth father. He came back after visiting him in BC with a photograph of his father's little tiny face in his high school soccer team or something and proudly said to me, "Can you find my birth father in there?" I was frantically trying to look and I couldn't recognize him. He pointed, and looked really disappointed. "That's him right there. Don't I look just like him?" It really struck me then how important that was to him, as much as he loves his adoptive parents. They are his parents.

That's the first time it even struck me how important it was for him to know that he looked like somebody. I think that most people take it for granted. We don't grasp, if you grow up and don't know you've got your grandpa's nose or whatever, how important that is to your identity and self-esteem.

Ms. Weiss: Yes, I think it's really important. I have one son who has an open adoption and another one who has a little bit of an open adoption. It's everything to them to know that they have some connection to their original family, whether they look like them, or—I was just saying to Lee's birth mother's sister the other day that Lee loves young children. He's a great role model for young kids. She said, "He's just like his birth mother." I thought, "That's hereditary?" But that's another piece of information that I can pass along. He's got real roots. It's very important to him.

The Chair: Thank you very much again for your presentation.

DAVID JOY

The Chair: We'll move on to David Joy.

Mr. David Joy: Good afternoon. Thank you for having me here. My name is David Joy. I'm an adoptee. I was born in Toronto. I am proud to say that I'm a pretty reasonable guy who's done pretty well for himself as a result of an amazing family. I have, as a result, used the foundation of love that I've grown up with to start my own family. I'm here before you to say I am really no different than anybody else in this room, and I want the right to say no. I believe that is my right, and I believe Mr. Ruby articulated it very succinctly.

I would like to say that I am completely in favour of a progressive bill, a bill that deals with the issues that you've heard before you, the issues of fetal alcohol syndrome that didn't exist to the extent when I was adopted 40 years ago.

I completely sympathize with the women 40, 50, 60 years ago who were forced, were stigmatized, were shunted aside to their aunt's farmhouse or whatever story was concocted to deal with the issue.

I also quite realistically understand that, as a result of the sexual revolution, I wouldn't be here if I was 20—most probably not: contraception, legalized abortion—but I'm just prior to that. I'm 42.

I have to say that I truly believe that I should have the same rights as everyone sitting around this table. The idea of someone telling me that "no contact," the way that it is enshrined in the current proposed legislation, will satisfy my need for privacy is totally off base. Just to be impolite, they are off base. If I wished to exercise my right to be contacted, I would join the registry, as have many other people, but I don't wish to do that.

I am fully integrated. I am David Joy. I am part of the family Joy. I share their history, as it is mine. I have given that history to my children. I have a mother. I don't desire the law to dictate to me that I should have to have somebody else be my mother unless I choose. I have one mother; I have one father. It's a great situation and I truly implore you to allow me my privacy by saying, "No. I wish to say no."

I don't know that many people here realize, unless you're adopted, that if you truly look at the legislation and believe in it, people like myself have been overlooked—people who are normal, sane, non-stigmatized, happy, well-adjusted people. I found out I was adopted at around age five. It was discussed between ages five and eight. I was quite happy with it. I knew what it meant. My mother made a very strong point of explaining to me the difference between natural birth and adoption, and she did it with such love.

I can't tell you. It's a very successful situation that I'm in. I truly just implore you. That's my only point that I want to make here today. I'm open to questions, but I just

want you to enshrine my privacy in the new bill. It is not protected under the "no contact."

Thank you.

The Chair: Thank you, Mr. Joy. We'll have two minutes each for questioning. Anyone from the government side?

Mr. Parsons: I understand what you're saying. We're adoptive parents. I understand what you're saying about your right to that.

Here's my struggle, and I need some help from you: We have adopted children. I'm getting up there in years, and as I get older, I get more interested in my birth family and my parents and their parents, and their grandparents. I go back and I look at photographs of my great-great-grandparents. I can see me in them, and that means something to me. So I understand.

I'm an engineer, where there's a right or wrong, and I'm having trouble getting a right or wrong on this issue. There's something in between. As I respect your right to not have contact, I can understand our adopted children's right to say, "I want to see my birth parent. I have roots. I have blood. I have family back there." So my struggle is, whose right supersedes the other's? I'd like to think that if my children say, "It's really, really important to me," I would be unhappy if someone blocked them from seeing their family history, because there is something to blood. There is something to that link. So tell me how I would explain to them that, although they really want to do it, they can't. I think they have certain fundamental rights, too.

1800

Mr. Joy: I'm not going to disagree with that at all. I think you make a very valid point. I won't belittle it in any way. But I will say this: Their rights and my rights are equal under the law.

There is a registry. There are approximately a quarter of a million people like myself, like your children, in this province. Only 57,000 people joined the registry in its existence, and it has been going on for quite a number of years. Out of those 57,000, how many are actually adoptees and how many are birth parents and what have you? It actually comprises a very small group of people out of a quarter of a million people who actually wish contact. So I'm kind of astounded that that has been overlooked, that I represent part of a silent majority that really needs our right protected until we're ready to go forward.

So your point is valid. But there is a registration system, and one can only hope, through public encouragement, that everybody who wants to participate in the registration system can.

Mr. Sterling: If the government was willing to accept an amendment which gave you that right of non-disclosure, as they have in Alberta, BC and Newfoundland—I believe in the British Columbia legislation, there are some limitations. The non-disclosure comes off after you pass away. Do you have any comments on that? If we go to that kind of disclosure debate, what would your position on that be?

Mr. Joy: You mean an intergenerational problem of non-disclosure?

Mr. Sterling: Yes.

Mr. Joy: That's interesting. I actually discussed the point of my adoption with my children, so they're aware that Daddy's adopted. They are six years old. They're cognizant. They're very intelligent children. They think it's fascinating. I don't have a real problem with it, to tell you the truth.

Mr. Sterling: Would you want them to have access to those records, if they so desired, after you've passed away?

Mr. Joy: Certainly. They're individuals. It's their choice.

The Chair: Mr. Parsons, I have a couple of minutes, if you still have questions.

Mr. Parsons: It's a comment that I've got to phrase in the form of a question—like on Jeopardy. I was on a CAS board for 25 years. I think one of the reasons the numbers were low—and I have no empirical evidence—is that there certainly was a sense in the community that that system didn't work. There was no use registering, because it was going to take five years, 10 years, to trace them. The resources weren't there, the energies weren't there, to locate them. So I'm certainly aware of numbers who said, "There's no point in this. I'm going to pursue it another way, because I'm at an age where my birth parents may not even be alive, so time is of the essence." So I think the numbers are a little artificially low on the registry.

Mr. Joy: I agree, but I also believe—and I think you might agree with me, too—that the numbers that are being moved around the table are a little bit artificial to suit different arguments. I put that forward as a comment on that. I am just given the information that the government gives me. That's it.

There are also no studies on how the adoptees are reacting when their right is removed. There are no statistics on a lot of this stuff. That's why I want the right to say no. I want control, just like everybody else around here.

The Chair: I still have a minute, if there are any questions.

Ms. Wynne: David, if the driver behind this legislation is the right of the child to know, would your disclosure amendment be a symmetrical one, so that the right to veto disclosure would be extended to both birth parents and adoptees?

Mr. Joy: Absolutely. You're going to have to understand something about me. Fundamentally, it's entrenched in my system to be as balanced and fair as I can, brought up by the parents that I have. I truly try to be impartial toward everyone.

I completely understand part of the mechanism that is driving this legislation. There was a serious social wrong committed several decades ago, and they're trying to right it right now. But two rights do not make a wrong. I believe in their right to say no, too. If I'm asking for the right to say no, they certainly should be accorded the same right. Right now, I'm allowed access to my medical

information if I apply. I would like that to be carried forward.

Ms. Wynne: So the right of the child, for you, doesn't supersede the right of the birth parent?

Mr. Joy: No, but it certainly shouldn't be the other way around either—absolutely not. I feel that's part of what is being proposed through this current legislation, that the birth parent's right is about to supersede my right. That's totally unbalanced. I'm an adult.

The Chair: Thanks very much, Mr. Joy, for your comments.

LONDON COALITION OF ADOPTIVE FAMILIES

The Chair: We'll move on next to the London Coalition of Adoptive Families. There is some noise, but I think it's better, so we can have some fresh air. If the noise is disturbing you, we can close the window.

Ms. Paula Schuck: Or I can ask them to stop.

The Chair: Can you ask them to stop? That would be better. Please proceed. Just shout from here if you can. You can start any time you're ready.

Ms. Schuck: My name is Paula Schuck. I'm with the London Coalition of Adoptive Families. Allow me to begin by saying that we, the London Coalition of Adoptive Families, support much of the Adoption Information Disclosure Act. We applaud the spirit in which it's being offered. We're not philosophically opposed to this bill; our interest lies in making it better for the purposes of our children.

We support openness and honesty in adoption. Some of the members of this coalition are biological parents; some have fostered children for years. We are all adoptive parents. We all practise what we preach, and we do not practise secrecy. We tell our children their adoption stories regularly. We read adoption books to them. We answer their questions as honestly as we are able. We love our children deeply. Like most parents, we fight for them when we must. This is one of those occasions where we feel we must.

We believe section 48.4 of this bill doesn't go far enough to protect children like ours whose birth parents have a persistent and violent history. We want to see this section amended to keep our children safe, not only as toddlers, preschoolers and teenagers, but through the rest of their lives. We, as a society, have an obligation to protect victims of abuse and violence from further abuse.

Adoption in the last 25 years has changed dramatically. In the past, the majority of children who arrived at adoption were made crown wards because they were relinquished by a birth mother who made an adoption plan. Those were the days when it was not only possible but commonplace to adopt a healthy infant. Those days are long gone.

Today, we have an increasing number of children who are apprehended from violent homes—children like my own. Some of these children have been apprehended by Ontario's children's aid agencies as victims of sexual,

physical or emotional abuse and neglect. Many were abused in utero by constant exposure to drugs and alcohol. These are hurt children, damaged children, children taken into care out of concern for their safety. These safety concerns do not vanish when our children turn 18 or 19. I think most psychologists would agree that an abusive parent can maintain control over a child at pretty much any stage of their life.

As the current legislation is written, the Ontario government would automatically pass on copies of birth and adoption records to adults adopted as children when they reach the age of 18. The proposed new legislation would see to it that biological parents receive identifying information with the adoptee's adoption record and adoptive surname. This means that when my youngest daughter turns 19, her biological parents—drug addicts with criminal records, which include sexual offences and murder—can essentially pick up where they left off. They would be given the original adoption order with her name on it and, armed with that information, could quite easily find her address. Think about it this way: If an abused spouse has a restraining order out against her husband and she's protected for years by the courts and police, do we suddenly release her name to her abuser at the age of 65?

In answer to Ontario's adoptees, the provincial government says, "Prove to us that your safety is compromised by our forced disclosure and apply to the Child and Family Services Review Board. We will then consider your case." In other words, the onus is on the adoptee. We don't believe this is an appropriate burden to place on an 18-year-old, especially one who was initially brought into care because of these persistent negative behaviours by birth parents.

We don't believe this solution is good enough for my daughter who, at one year old, may face a lifetime of uphill battles developmentally, physically and psychologically because of drug abuse sustained in utero. My youngest daughter is by no means an isolated example. Her social history is pretty representative of a vast number of Ontario's adoptees.

1810

We don't believe it's fair or humane to ask a child to stand before a panel of strangers and explicitly detail sexual, emotional or physical abuse. How devastating would this be to a young person, adopted as a toddler, who was sexually abused? Is an adoptee expected to celebrate their 18th birthday and then drive to Toronto to say, "By the way, I wish no contact ever with the person who gave birth to me because she stabbed my father 20 times while I lay in my crib upstairs"? How can anyone expect a young man, barely out of high school, to tell a tribunal of unfamiliar faces that he went to sleep every night of his childhood fearing that the mommy who beat him until he was hospitalized might somehow still find him in his new home? How many times do our children have to be victimized?

The London Coalition of Adoptive Families is proposing that section 48.4 be amended to allow the province's children's aid agencies to place a non-disclosure order on

file where the birth family has shown a persistent history of violence. We trust that adoption workers could do this at the point of adoption. This removes the onus from our young people in order to protect them from unwanted contact.

The London Coalition of Adoptive Families would like to thank you for this opportunity to address the committee today.

The Chair: Thank you very much. We still have about three and a half minutes. Does anybody have any more comments from your side? None? Ms. Churley, do you want a minute plus?

Ms. Churley: Thanks for your presentation. I had some calls about this issue. Is this the section right here? I don't have my glasses.

Section 48.4(1): "Any of the following persons may apply to the Child and Family Services Review Board, in accordance with the regulations," which, of course, still have to be written, "for an order directing the Registrar General not to give a birth parent the information described in subsection 48.2(1)...." Then it goes on, as I understand it, to deal with some of the issues you raise. I take it you feel that's not strong enough, even when your children become adults.

Ms. Wendy Conforzi: The way it's written is that the child would have to put it on at the age of 18. They would have to go before the committee to state why they were concerned for their safety and what their concerns were. Our concern is, do we have to tell our children all through their upbringing of the violent acts committed by their parents? They know their parents had problems, they know they had issues, but we have to stress their safety concerns. Do you raise them with that knowledge, or do you give it to them for their 18th birthday? "You have to go to Toronto because...."

Ms. Churley: If I could just follow up, in that case, if they wanted to get the information once they were an adult, they could—

Ms. Conforzi: If they want to do a search at the age of 18, if they're ready at that point, I'm certainly fine for the child to do that. My concern is, if the child is not in a space where they want to—and I see it as an imposition by a birth family that already violated a lot of these children's rights—if the child doesn't want to be contacted by them, they should have a right to have that happen, but they shouldn't have to put the non-disclosure on themselves. It should automatically be there for these specific children.

Ms. Churley: I see what you're saying.

The Chair: Thank you. Madam, could you identify yourself for the record.

Ms. Conforzi: I'm Wendy Conforzi, and an adoptive parent as well.

The Chair: Mr. Jackson, a minute, please.

Mr. Jackson: Thank you for your compelling presentation. I'm generally supportive of open adoption records but I am painfully aware, personally, of violations of privacy matters. So I'm struggling with some of this legislation, but in principle I support it. I suspect your

presentation resembles my view of what we should be doing here.

I want to thank you for presenting this notion about expecting a child under the age of 18 to confront this issue. So I'm going to ask you an obscure question, and that is about the level of counselling support that we make available. Nobody's raised this issue about consequences. It strikes me that we have circumstances in our society where there's extreme trauma, extreme stress and distress, and emotional difficulty. Is there any role, in your view, for assisting families who go through this process with counselling?

I'm trying to think ahead. If the Liberals use their majority to impose this legislation, should there not be some safety net to assist those individuals? We've heard from Ms. Cavoukian about people who are potentially suicidal, and you've raised a whole other group of young adults who are having to question their own self-confidence, having now to confront their circumstances. Nobody's really talked about this. When only one jurisdiction in the world is doing it, we shouldn't expect there to be a large body of knowledge of how to work with it. Could you comment?

The Chair: Briefly, madam, please.

Ms. Schuck: I believe the counselling is crucial. Taking away that piece is a terrible mistake. We need to fund counselling for years of—say my daughter goes searching 18 years from now. I would like to think that, regardless, there will be some supports other than just myself and my husband and our immediate family.

The Chair: Ms. Wynne.

Ms. Wynne: Just very quickly. I just wanted to be clear. What you're suggesting is, then, that there would be an automatic no-disclosure order on situations where there's a violent birth family and that that would be the default until the adult decided to remove the no-disclosure order?

Ms. Conforzi: Or actually the child wouldn't even need to remove it. They could initiate a search on their own. They could access the information on their own. I guess in one format we were looking at it that if the birth family wanted to, there could be a registry where they could put their information, so when the child began a search, say a birth mother had changed her name or the father had moved somewhere else, there could be some type of registry where they could put in that information so that when the child felt ready to search for the family, they could easily access the new information on the family. That is one way that we were thinking of having it work.

Ms. Wynne: Have you written out your presentation?

Ms. Conforzi: We have.

The Chair: Yes. We also received it, I believe, in the mail, didn't we? It's a matter of record.

Ms. Wynne: Thank you.

The Chair: We thank you for your presentation. Bon voyage back to London.

LESLIE WAGNER

The Chair: We'll move on to the next presentation: Leslie Wagner, social service worker, please.

Ms. Leslie Wagner: Dear standing committee: I'd first like to say that I am a natural mother and I've never abused either of my children. I think that's important for you to know.

It was almost four years ago that I stood before the committee in support of Bill 77 to open adoption records. At that time, I was in my fifth year of searching for my son. I'm very pleased to announce that my son and I reunited on February 21, 2004. Anne Patterson, a private investigator and an adopted adult, located him. My son and I continue to develop a significant relationship determined and defined by ourselves. Our reunion has allowed us to begin the healing process that a closed adoption system imposed upon us. If the current system flowed flawlessly, none of us would be here today. My goal in sharing my personal experience is to accomplish a solution-focused review.

It is very important that the committee recognizes that the breach of confidentiality supposedly promised to natural parents is a myth. We have asked those who insist that opening adoption records will break a promise made to natural parents ensuring anonymity to produce such documentation. To date, no one has uncovered such a document. Anyone who has researched the history of adoption will discover that adoption records were sealed in 1927 due to appeals from adoptive parents. Prior to 1970, birth surnames were revealed on the adoption orders given to adopting parents. This clearly debunks any promise of confidentiality.

Imposing the confidentiality myth in the vein of protection from the government adds insult to injury. What this implies is that I, or all natural parents, live in shame and secrecy for having a child out of wedlock. What it does to an adopted person is perpetuate that their existence should be regarded as shameful and that they are somehow a threat to their natural-born families. This greatly contributes to producing a negative impact on one's self-esteem. Closed adoption records confiscate an adopted person's natural-born identity, predisposition to medical conditions and the fundamental nature of who they are.

In a democratic society, we all have the right to freely choose and define our relationships with any person. Government intervention in a closed adoption system continues to infantilize adopted adults and their natural-born families. This archaic framework enforces a governing body to deny me the right to build relationships with anyone of my choosing. Each adoption story is as individual as those involved, yet current policy is blanketed by one law prohibiting access to information pertaining to our own lives. This fails to recognize our individuality within society and infringes upon our basic human rights.

1820

Guilt and shame were the tools used to have us surrender our parental rights under the guise of being virtuous and doing the right thing for the baby. There appears to be no accountability or penalty set for social workers practising unethical methods. This area must be explored and appropriate consequences enforced.

Current adoption practice permits social workers to facilitate both adoptive parents and natural parents simultaneously. Since the livelihood of adoption agencies relies on the revenues incurred by adopting parents in obtaining a child, a conflict of interest is generated. Removing the financial gains for adoption agencies could deter the discreet motivations agencies use to achieve relinquishment from natural parents. Any kind of monetary exchange to adopt a child should be abolished throughout this country.

We are undeniably an unbalanced society when we accept and support a system that profits financially on any single mother's struggle and lifelong grief of losing one's child to adoption. Our role needs to be assistive in family preservation. Should a mother find herself contemplating adoption, she must be provided with a support team. These professionals would work solely to advocate on her behalf, independent from any adoption agency. The mother must be given written, accurate information regarding the truth about the long-term ramifications adoption can have on herself and her child. A policy deficient of this gives a misleading representation of the effects of adoption. This contributes to the one perception depicted of adoption as being only a wonderful panacea.

Over the last decade, I have experienced first-hand the struggle within the adoption disclosure registry, ADR, to assist the adoption community in a sensitive, timely and skilful manner. In becoming a social worker, I prepared my thesis on adoption and met with a worker at the ADR. I discovered that they have employed adoptive parents but I could not say if there are any natural parents or adopted adults employed by them. It is absolutely essential to implement representation of all parties impacted by adoption. Best practice would recommend establishing a new agency once records are open. Caseworkers would need focused sensitivity training and must support openness in adoption.

Bill 183 will grant us identifying information. This is great news. I do have concerns regarding the omission of access to non-identifying information. The adoption community has become quite savvy with the crumbs of information we struggle to obtain. However, our ultimate goal is to eliminate the inconsistencies we experience when actively searching for our loved ones. Accurate non-identifying information is needed to piece together the puzzle.

I ask everyone here to imagine how you would react if a social worker informed you in a self-righteous and condescending manner that you have no right to access information pertaining directly to yourself, yet the social worker can study it at any time in a leisurely and unrestricted manner.

I cannot articulate the devastating result this daily practice by social workers executes upon the human psyche. You feel as though you will ultimately find yourself seeking psychiatric treatment because of the injustice, misuse of power and vilification a closed adoption system creates. Natural parents have endured cruel and unusual punishment for supposedly ensuring a better life for our children. These contradictions are very confusing and detrimental.

The large fine imposed in the bill implies the government views those adopted and their natural families as deviants and potential stalkers. Surely current stalking laws will encompass the unfounded concern that adopted adults and natural families will routinely violate this existing law.

Adoptive parents, natural parents, or anyone opposing Bill 183 have only their own personal agendas they need to examine, but no longer at the sacrifice of those who embrace their realities, as sensitive as they might be.

Bill 183 contains no disclosure veto, and it should be passed without one. Disclosure vetoes are cruel, punitive and unnecessary. Those who are adopted never had a voice or a choice regarding their adoption. It is time we give this to them.

Finally, if the bill is not retroactive, we should all just go home now and start the process over again. The legislation is bogus without retroactivity; it's as simple as that.

Seventy-eight years, all of our lifetimes, is a long enough sentence to serve for the crime of being adopted or surrendering one's child for adoption. I implore the committee to provide our community with open adoption records and allow us to form our own choices in our lives.

I'm grateful to Sandra Pupatello, Marilyn Churley, the Liberal and New Democratic parties, and the members of COAR.

The Chair: You used the 10 minutes. We thank you for your presentation.

JOYCE ARMSTRONG

The Chair: We'll move on to the next presentation, from Joyce Armstrong. Ms. Armstrong, you have a total of 10 minutes.

Ms. Joyce Armstrong: I'm someone who has been searching for 23 years for my 55-year-old adopted sister. The main reason I'm here today is that if the bill goes through, I'm hoping and praying that a change can be made for my benefit. The fact that information will only be given out to the birth mothers—in my case, my mother has been dead since 1982. I'm hoping that the wording can be changed so that I, the only sibling left, can be given the information that I need to try to find my sister.

I'd like to read just a little bit of a letter that I sent to a few of the ministers:

"Please! Can you help me find my adopted sister before I die? I am a 57-year-old grandmother who des-

perately wants to meet my 55-year-old sister, Rita Catherine.

"I grew up an only child in my grandfather's house in Toronto; just me, my single mom and my Grampy. I always felt kind of lonely as a child—now I think I know why.

"I was never given any information about who my father was and this has also been a very painful subject for me—knowing that he is probably deceased by now and I will never even get to see his face or to know my paternal nationality.

"My mother and I were always very close, but two months after her death in 1982, I learned she had taken her lifelong secret to her grave. A friend of hers called me and asked, 'Did your mother ever tell you anything about your sister?' My heart almost stopped, then I lied to her and said, 'Yes, but not much. What do you know?' She said that two years after my birth, my mother had another baby girl but my grandfather had forced her to have that baby adopted. My mom's first 'mistake' (me) was embarrassing enough for him, but a second child was totally out of the question and I guess not welcome in his house—because 'What will the neighbours think?!' I loved my mother and grandfather very much, but now I am angry at them (even in death) for getting rid of my sister!

"Needless to say, I was totally shocked that day on the phone for I was still grieving the loss of my mom. So, still crying, I called my priest and was shocked again when he advised me not to try a search for her because my search could possibly lead to a graveyard! Of course I ignored his warning and called the children's aid society. All they told me was that Rita Catherine was born at St. Joseph's Hospital on June 21, 1950, and the couple who adopted her lived somewhere just outside of Toronto and had a young son. After that, I did register with the adoption disclosure registry—in 1982 or early 1983—"in the hope that if Rita ever finds out she was adopted and comes looking for her birth mother, that then and only then will she and I be matched together.

"Back in June of 1983, I placed an ad in the paper: 'Happy Birthday, Rita Catherine, born June 21, 1950. Your birth sister is desperately wanting to find you.' But no luck. Many times in the past, when I have met someone named Rita (of the approximate age of my sister) I ask when their birth date is"—but once again, no luck.

1830

"I sadly came to the conclusion many years ago that unless the present archaic adoption laws can be changed in my lifetime, or that I could win a lottery and promptly hire an investigator, that probably, and unfairly, I will never experience the great joy of seeing her face for the first time. I agree that for recent"—oh, I'm going to leave that out.

"But after many years have passed, such as in my case, where no minor children are involved and especially where the adoptive parents are probably deceased,

then we, my sister and I, both should have the legal right to know each other for love's sake.

"Even on that very first day I learned about her, for some strange reason I kept imagining a scene in a church where two elderly ladies in wheelchairs have been brought to meet for the very first time just when they are close to death. What a sad waste of precious years together that would be.

"Please don't make me wait any longer. I am not well, like my mom, who died at age 67 from her extreme high blood pressure. I also take two kinds of pills per day to try and control my blood pressure....

"Meeting my sister after 55 years certainly would be a highlight and a most miraculous and wonderful day for me.

"I am begging that the adoption disclosure bill will include me, a sibling, so that helpful information might be given to siblings, not just birth mothers, when the birth mother is deceased....

"My granddaughter said to me recently, 'Granny, why can't the government change the laws because your sister's adoptive parents are probably dead now anyway?'" She's 10 years old.

In general, I feel that no one has the right to keep me from meeting my sister, especially after 55 years have been wasted. My family didn't have the right to keep it from me. No law or bill should also take that right away for me to know her.

Finally, still missing my mother 23 years after her death, being able to hug my sister would be like having a part of my mom back with me. Once again, I implore you just to change the bill to help someone in my strange predicament.

I was at my doctor's office a week ago having my yearly checkup and she signed a few papers for me to help in my search. I just want to quote what she said to me. She agreed with me that I have the right to find my sister, and she said, "If I had ever adopted any children, I would definitely have told them that they were adopted because of health issues that they should know about their birth family. They have a right to know." She wrote on here for my birth sister, if I can ever find her, "As there is a strong family history of cardiovascular disease, it would be prudent to allow Joyce's sister to be informed so she can be screened if she doesn't attend a doctor regularly." In other words, she could drop over from a stroke, as my mother did at age 67 and my aunt at age 67 with two strokes, and our grandmother died at age 52 after three heart attacks.

That's about all I have to say. Thank you for listening.

The Chair: Thank you, madam. There's about two minutes total. So less than a minute, Ms. Churley, if you have any comments or questions.

Ms. Churley: Thank you for your presentation. You certainly demonstrate in a very personal way how very important this is for people in your situation. As I understand it, the bill, as it is now, only applies to the birth parents and the adult adoptee and doesn't deal with

siblings and other relatives. You're asking for an amendment to fix that?

Ms. Armstrong: Yes, please.

Ms. Churley: The second thing I just wanted to ask you quickly—you've got some medical information here. Just under the existing laws, have you gone through the process? A grandmother dying at 52 after three heart attacks is critical information to get to a blood sibling. Have you gone that route as well to try to—

Ms. Armstrong: That's my doctor's point. What if she's the type of person who's walking around and doesn't like going to the doctor and her blood pressure is like mine, sky high? She could die. She needs to know.

Also, at age 55, I have the feeling that the people who adopted her may never have told her to this day that she's been adopted and it will be a terrible shock to her. I also realize that she may say, "No, I don't want any part of this, a mother who gave me up and kept that one and didn't keep me." I understand all that. It'll be very hurtful to me if that does happen, but at least then I'll have to try to get on with my life. At least I'll know she's still alive. Right now, I don't know if she's alive or not.

I wish the privacy minister was still here because I'd say to her, "Unless the bill goes through and information is given to me as a sibling, tell me how I can find her without winning the lottery tonight," sort of thing, and hiring an investigator. I don't have money right now for anything like that.

The Chair: She was the commissioner, not the minister.

Mr. Parsons has a question for you.

Mr. Parsons: One of the challenges you faced was, you didn't know till very late in life that in fact you had a sister.

Ms. Armstrong: A couple of months after my mother's death in 1982.

Mr. Parsons: I bet you would have loved to have known 25 years earlier or more.

Ms. Armstrong: Oh, of course.

Mr. Parsons: At one time, it was fairly normal practice when siblings came into the care of a children's aid society to split them up and adopt them to different families. I would think there are quite a number of individuals in Ontario who are adopted who have not a clue that they have a sibling somewhere. This bill doesn't deal with it. Is there a better way to make individuals aware that they in fact have a brother or a sister or both or more somewhere? There's no way to find out. In fact, the adoptive parents may not know that there are siblings.

Ms. Armstrong: Yes. I know I shouldn't be mentioning someone else who just spoke, but the young fellow, the 42-year-old who's so angry, it's strange to me. He mentioned to his children that he's adopted and his children will probably grow up thinking, "Daddy's a creep. He doesn't want to meet his own blood mother." If one of those children ever gets sick, and it's something that he has to talk to his real mother about, he'll change his tune fast then. He's acting like it's the end of the world for him if his mother comes—

Mr. Parsons: I'd rather not talk about him. I would rather talk about—

Ms. Armstrong: OK. I'm just saying that all he has to say to his birth mother if she comes looking is, "Sorry, I'd rather not. Goodbye." Big deal.

These are two lives we're talking about here, two ladies who are getting on to be seniors soon who have the right to meet.

The Chair: Thank you very much.

Ms. Armstrong: Thank you for letting me speak. I'm shocked that I didn't need a box of Kleenex here.

Ms. Churley: We're doing well today.

Ms. Armstrong: Yes. This is the bravest I've been in two years, I'm telling you.

The Chair: Thanks.

MICHELLE EDMUNDS

The Chair: Is Michelle Edmunds here, please?

Ms. Michelle Edmunds: Thank you for giving me the opportunity—oh, by the way, this is my adoptive brother, Paul, who came to support me today.

Thank you for giving me the opportunity to share my thoughts with you. I am a reunited adoptee. I reunited with my birth mother and four siblings eight years ago. I am very much in favour of Bill 183 passing in legislation.

I would like to share with you a recent example where, because I am adopted, I was unable to answer an identity-related question. A co-worker of mine and I were talking over lunch. She was talking about being from Egypt and she asked me, "What is your nationality? Where are your parents from?" I felt that all-too-familiar knot tightening inside of my stomach, which happens every time I am presented with identity questions or scenarios, and I replied, "Actually, my mother was born and raised in Halifax, but I have no idea where her parents or ancestors are from. I only met my natural mother once, and that was for about five hours in her apartment in Edmonton in September 1996. To tell you the truth, I will probably"—am I too close?

Ms. Churley: It's a little too close.

Ms. Edmunds: Oh, sorry.

"To tell you the truth, I will probably never find out what my nationality is or who my ancestors were. My natural mother died two months after I met with her. I was 34 and she was 62."

This conversation is not unique. In fact, it's just one of countless instances where I could not freely identify myself to others. I am adopted, and this means I have never had the privilege of answering any questions on my ethnicity, appearance, medical background, ancestry, personality, talents or characteristics.

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There has never been a time in my life when I did not have the innate need to know my natural mother and identity. The perception I held of my birth mother, however, would often oscillate: One minute I would be dreaming about her, and it felt as though she were in the room with me, talking to me, and I wanted her and

needed her, but just as I was about to see what she looked like, she would quickly disappear and I would awaken in tears, longing for her faceless image to re-emerge. Soon after, though, I would be angry with her and decide that she was not worthy of meeting me. Then I would think about my adoptive family and feel tremendous guilt on how it would hurt them if they knew how much I wanted to know my natural mother. I would say that I was happy and content with the family I had and that meeting my mother was not important. But it was a charade, and the dreams did not stop; they in fact amplified, and so, often, while looking at my reflection in the mirror, I would crave to see my mother's face, my father's face, an aunt, a grandparent, a cousin—just someone who I could say I looked like. I wanted to hear a voice, a laugh. I wanted to know what my ethnicity was, and could I be the daughter of a movie star or a descendant of royalty?

You see, I had convinced myself that there must be some grand reason why my identity was such a secret and why I was forbidden access to it. Fantasizing about who I was and where I came from was easier than facing a painful truth: the truth that the very people who gave me life didn't want me; that not only was my conception and birth a mistake, but something must have been terribly wrong with me, because all my friends and schoolmates had been kept by their families, yet I was given away.

For years I struggled with the decision to search, not to search. What will I find? What if I'm rejected? But the physical urge never ceased. It was as though I were suffering from some sort of identity deprivation, and the need to connect with my roots was escalating, begging to be confronted. But I felt powerless, alone and scared of potentially hurting so many people. Then I would say to myself, "This isn't right. I did not choose to be born, I did not choose to be adopted, and I did not ask that all fundamental aspects of who I am be taken from me and hidden." I realized that I could no longer deny my feelings and that searching was one step toward self-healing and autonomy. I realized that wanting to discover my past was not because of selfish or irrational thinking and that contrary to what I had been taught, it was normal to want to know my natural identity and family. I realized that a serious injustice had occurred and it was me who had been victimized by the practice of adoption, not my birth mother, not my birth father and not my adoptive parents.

Everyone had made a choice on what my fate would be, but I had made none.

I no longer felt obligated to carry the burden of shielding everyone else's fears, and I came to understand that the secret that everyone was so terrified of being exposed was in fact me, a human being with dignity and needs and not some dirty little secret that should be silenced and hidden in shame. Someone chose to bring me into this world, who, for whatever reason, could not raise me, but by no means did this justify denying me the absolute and irrefutable truth to my existence.

A few years ago, I was invited to speak at a support group of teen adoptees to share my search and reunion story. At the end of the session, one young girl, probably 14 or so, looked straight at me and said, "If I saw you on a bus, I would think that you were my birth mother, because we have the same colour of hair and eyes; you know, we kind of look alike." My heart dropped and I felt sick, helpless, as I understood her pain, her need. I was once that person who for years would gaze intently at people in my schools, in stores, at parties, at work—anyone who I thought might be a blood relative. I would wish they would recognize me and say that I was part of them, but of course it never happened.

It wasn't until I was able to stand face to face with the woman who gave me life, to touch her, smell her, look into her eyes, see the tummy that I had once grown inside of that the dreams ceased, the fantasies subsided, and I realized that it was her I needed confirmation from that I really did exist. I was happy. For the first time in my life I felt like a real person. I could feel the earth beneath my feet, I could hear my voice—her voice—and it felt as though I just might be part of the same universe as everyone else.

I believe that the Ontario government has really come a long way in recognizing the long-term effects of concealing a person's natural identity. I admire the members of this Legislature who have shifted their views to that of understanding that the intrinsic need to search for and reconnect with one's roots is a basic human need, and that every adopted person deserves, like all non-adopted individuals, the knowledge of, and right to, any information that makes up the very essence of who they are, who they were and who they may become. Thank you.

The Chair: Thank you. There is about a minute and a half total; 30 seconds each if there are any questions.

Ms. Churley: Thank you for coming forward and telling your story. I think what is probably important and what is not being said here is that finding your birth mother did not take away your relationship with your adoptive parents.

Ms. Edmunds: Absolutely not.

Ms. Churley: That is sometimes one of the concerns expressed and one of the fears. But of course your adoptive parents bonded with you raising you, and you would have had a different kind had your mother lived. Can you speak to that briefly?

Ms. Edmunds: My adoptive family, actually, were pretty reluctant at first. I didn't tell them, again, because that's the story of the adoptee: guilt. It was actually my other adoptive brother who told them that I had reunited with my mother. They weren't pleased, but they came to understand, and then she died, as I said earlier, two months after I met her. But they embraced my four siblings and they would have embraced my mother had they been given the time.

The Chair: Thank you very much for your story. We wish you a good evening.

D. MARIE MARCHAND

The Chair: We will go on to the next presentation. The last one this evening is Marie Marchand. Is that properly pronounced?

Ms. D. Marie Marchand: That's close enough considering it's not my name. It's the name that the judge gave me.

The Chair: Thank you for coming.

Ms. Marchand: Greetings. One of your constituents is a very good friend of mine and had a good conversation with you.

I'm going to read something. I'm going to take somewhat of a different slant on this. I'll give you a little bit of my background. I'm a constitutional lawyer. I articulated and had a contract in the office of the Attorney General of Ontario as a constitutional lawyer and policy adviser. I was an articling student of record on the same-sex adoption case. Because the issue was conceded, because the best interest of the child was based on the adults, as a right, as opposed to the best interest of the child, groups did not get to intervene.

My adoptive mother and grandmother were alive at the time, and dying, and they were really quite abusive to me. My tragedy is that I did not form a relationship because there was no truth. We need absolute transparency. When human beings don't have the truth, they speculate, and when you speculate about your very existence, that's crazy-making.

What I'm attacking and what I have a real problem with is the name-changing. I'll tell you something, and Gail Sinclair from the federal government, who is a constitutional lawyer there, will tell you the same thing: It is a criminal offence to not only put false information on a statement of live birth, it deprives all Canadians of a true and accurate census. It's black-letter law, sweetheart, and there is no relationship between my best interest and changing my identity. At seven years old, you can't; at 14, you're not allowed to even discuss the issue of changing identity.

If there is complete transparency—what?

The Chair: Go ahead. I'd like you to talk to me, if you can.

Ms. Marchand: Sorry?

The Chair: I just want to make sure that you were talking to me.

Ms. Marchand: Oh, I'm supposed to talk to you. But he's so cute.

The Chair: I know, but I'm the Chair, so I have a little more—

Ms. Marchand: Oh, OK.

Now that I've said that's federalism, I heard in the House somebody talk about lawsuits. You do something wrong, you do something unethical, you screw up, you hurt somebody—because we're adopted, you should not be protected from that kind of behaviour.

Bootstrapping: The idea that the privacy commissioner here stands up and says, "Well, some of these people are 40 years old and these are in their 70s"—I asked when I

was four years old. My father was 22. My adoption was supposed to be open. They did not change my identity. They sealed my records and they didn't bring out a new statement of live birth. I don't exist. I can't get a passport. I couldn't vote until 1993. I have a real problem with the bootstrapping.

I went public with Michele Landsberg on July 7, 1999, and I have been targeted as a whistle-blower by the ministry. I went public—she wrote a really nice article—hoping that my father would come forward. She used my name as given now. I was stalked by my father, but I'm not allowed to know who he is.

Regarding Law 101 and the right to privacy: The right to privacy is between the state and the individual, not between individuals. We have a criminal harassment law to deal with that.

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Traditional ways: I was the outside editor—actually, I was the editor—of the royal commission on Aboriginal issues, traditional adoption. There is absolute transparency.

I think about the significance of the new reproductive technologies. For a child whose egg comes from one woman and who is in the womb of another woman and who is raised by another woman, that child's reality is they have an egg mother, a womb mother, and a social mother. They can mediate that. That's truth. What you can't mediate is confusion and speculation.

The issue of competing rights: Birth parents and adoptive parents know where they come from; we don't. We're the only group of people who don't know where we come from.

My life has been a nightmare. In the last eight years, I've lost my farm, my house and my law firm.

I think it's a real problem to have the state mediating the emotional lives of people. Precisely because it is so emotional, the state shouldn't be involved.

The other thing is, promises are not enforceable by law—another basic 101.

As far as medical is concerned, in the last six years I've been hospitalized twice and nearly died. I nearly died several times as a youngster. I have some serious hereditary illnesses. On my behalf, five doctors have tried to get information about medical records from my father. They contacted him and he said he didn't know my mother; then he admitted to having a relationship with my mother. My doctors tried to get this information, and they were really perturbed by what happened, so they wrote a really strong letter saying, "You're practising medicine without a licence" to the adoption registry. So they hired a doctor to overrule. "Do no harm," right?

I work with a group of children, and this is what they wrote:

"To whom this concerns"—I helped them, but these aren't my words. I helped them; I typed it.

"Why is it taking so long? Why do adults always make things so icky and long?

"Who changed my name in 19xx when they didn't have to? How come if I'm seven you have to ask? How come when I'm 14 you're kind of not allowed to?

"How would you feel if, all of a sudden, right now, someone changed who you are?

"It's hard to not be able to talk about it."

I just want to take an aside. When I was four years old, I found out I was adopted. I asked about it, and my adoptive mother—they did no house study on her—said if I said anything to my adoptive father, he'd kill me. She was adopted. Her own life was just tragic. The tragedy of this whole thing is that without truth, no real genuine relationships can develop. My adoptive father kept telling me things like, "Your father's a piano player" and "Your father can roller skate." I would say, "You roller skate?" and "You're a piano player?" He said, "No, your father was." I was thinking he was setting me up to take a shot at me, when in fact he knew who it was.

It turns out that my mother lived with my father's family, and when she got herself pregnant, my paternal grandmother kicked her out of the house. My father was on the road with the band. He never knew what happened. His heart was broken. He was just totally surprised. Then he found out, and then I didn't want to contact him, so his heart was broken again. He wanted to be a part of my life.

I have to make some corrections here. The records were sealed in 1978, retroactively, because with the permission of your adoptive parents, you were entitled to that information. I had to do all the research on the history of the law when I worked for the Attorney General's office. In fact, I will tell you, as a matter of record, that there is absolutely nothing in Hansard discussing why the records were sealed. I do happen to know—and I cannot reveal because this is cabinet stuff—that they were concerned about lawsuits.

I'll give you an example. There are two people teaching at the University of Toronto who were divorced and living separately, apart, and they lied about being married in order to adopt these two children. I know, because I was looking after her house when he walked in on me and my partner and said, "Oh, I have my mail sent here so they won't know we're divorced and they won't interfere with our adoption." This goes to what Ms. Wagner said about the possibility of corruption and conflict of interest.

I just want to return to this really quickly here. I know I fit a lot in. I really miss teaching.

"I don't think I can make my adoptive mother happy." This is the kids again. "I was told that I knew she's a nice lady and that she loves me. I always have to call them my mother and my father. I'm not even supposed to say their names even if I'm telling someone that" Sarah Whoever "is my mother's name. My adopted Aboriginal Canadian friend calls her adopted mother her auntie.

"It's kind of like those heritage commercials on television. The Irish kids asked to keep their names and got to keep their names.

"There was another show on television the other night. It talked about kids being taken out of the country by their dads. The kids were supposed to be living with their moms...." You've got my submission, so I'm just going to really summarize here.

I heard a concern raised: "Well, how do you adopt if you can't change the names? How do you take a child that you've adopted across the border?" You get a card called a Guardian Angel card. It's a photograph of you and your custodial parents, whoever they are, so that you can cross the border. That information is on that little code, and if it changes, it's taken off. It also addresses a really serious issue we have about non-custodial parents taking children out of the jurisdiction and having, in some countries, no treaties to get them back.

Anyway, that's from the imagination of a seven-year-old, through whose eyes I am able to see. It's unfortunate that so many people can't.

The Chair: We thank you.

Ms. Marchand: Is that my 10 minutes?

The Chair: Yes. Your 10 minutes are over. We thank you for your presentation.

We thank everyone for being here. We will be recessing, after I hear from Mr. Jackson and anybody else, until tomorrow.

Mr. Jackson: Very briefly, Mr. Chairman, I notice that there are a substantive number of individuals who have travelled to Queen's Park and have been sort of crowded in the room next door. I wondered, if the Amethyst Room is available tomorrow, if we might move to the Amethyst Room so that we have access to the closed-circuit television for individuals who come to Queen's Park tomorrow. They're just able to have the audio version at this point. If it's possible, Mr. Chairman, I leave it in your good hands, as a suggestion.

The Chair: I thank you. Just for the committee to know, the suggestion was that if the committee wishes to switch with us, then it's a possibility. Nonetheless, we're going to look into it, and if it's possible, you'll be notified. Otherwise, we will reconvene tomorrow at 3:30 in the same place.

I thank you again for your understanding. We'll see you tomorrow. Good night.

The committee adjourned at 1857.

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**Standing committee on
social policy**

Adoption Information
Disclosure Act, 2005

**Comité permanent de
la politique sociale**

Loi de 2005 sur la divulgation
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Thursday 19 May 2005

Jeudi 19 mai 2005

*The committee met at 1541 in room 151.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

PAUL BADERTSCHER

The Chair (Mr. Mario G. Racco): Good afternoon again. We will be starting the presentations about Bill 183. Today is our second day. Yesterday was our first day. Therefore, if we can, we will start with the first presenter, who is Paul Badertscher. I would ask him to come forward.

As you get ready, a reminder that considering what we are discussing today and that the cameras are on, those of you who wish not to be shown, would you please indicate that to me or to the clerk so that we will do what we can in regard to this matter. Basically, our cameras will be behind, so the face of the person who is speaking will not be shown.

Thank you, sir. The floor is yours.

Mr. Paul Badertscher: Thank you very much, Mr. Chairman. I very much appreciate the opportunity to appear before this committee. It was short notice, but I was glad to be able to make the trip down.

I know that members of this committee have received my submission by e-mail in case it was lost in the absolute flood of paper that I'm sure you've received on this bill. I have to thank the member for Don Valley West, who forwarded my submission to the clerk and who distributed it to the members who were not on the official list. I thank her very much for that.

I'm not going to read my submission. I just would like to emphasize a couple of key points and then, in the very short time we have left, maybe have some time for your questions or concerns.

I'm not here to argue the essential nature or the philosophy of Bill 183 at all. My concern really is with the way that Bill 183 would apply to a very small number

of adoptions that take place in Ontario. The other key point here is that this is, for me, an issue of safety and an issue of emotional well-being, much more so than an issue of privacy or convenience.

The central issue I have is that the bill does not distinguish between adoptees who were voluntarily relinquished by their parents and those who were adopted after being made a crown ward. This is a key point because the crown ward designation is not one that's made lightly; it comes only after the intervention of a child protection worker to remove a child from a dangerous situation.

Further, after a fairly lengthy legal review process, the court has to be satisfied that the child—and here I'm going to quote from the Child and Family Services Act, subsection 57(1)—“is in need of protection and ... that intervention through a court order is necessary to protect the child in the future....” By not making a distinction between the adoption of crown wards and the vast majority of adoptions of other kinds, Bill 183 would essentially have the potential to overturn these court orders that granted these children the protection they need.

I think the drafters of the bill recognized this fact and tried to deal with it. They did in fact recognize that, in some cases, it could be potentially very dangerous for birth parents to receive identifying information about the children who were apprehended from them previously. So they recognized that fact when they included section 8 of Bill 183, which allows for the non-disclosure order which would “prevent significant harm.”

The trouble I have with section 8 is twofold. The first problem is that it puts the burden of proof on the wrong person. In essence, it establishes a kind of negative option billing to stop the court order from being overturned. It makes it up to the adopted crown ward to go before the Child and Family Services Review Board and argue why the current court protection that they were granted should not be overturned. That strikes me as wrong.

Further, in order to maintain that protection, section 8 forces the adopted crown ward to go through what I think we should all recognize is a pretty difficult process. They would have to appear before a panel of strangers, the Child and Family Services Review Board. They would have recount the abuse, the neglect, whatever it was that led them to being designated a crown ward in the first place, and they'd have to do so before they turn 19,

before they're legally allowed to buy a bottle of beer in this province. We're counting on them to be with it enough to handle that.

I think this problem can be dealt with very simply. One way I've suggested in my submission is to simply amend Bill 183 to restrict birth parents of adopted crown wards from having the same access to identifying information as the birth parents of adopted children who are relinquished.

A couple of points to stress again: First of all, this amendment that I am proposing would have no effect whatsoever on the vast majority of adoptions in Ontario, those where consent was granted by the birth parents. The second is that this amendment would do absolutely nothing to prevent adopted crown wards from finding out their own information about their birth parents, but it would happen if and when they were ready to receive it. The timetable would be theirs. I think that would address the concerns that maybe a number of people behind me might have.

There could be other ways to amend this bill and maintain the protection for adopted crown wards if the committee finds the amendment I'm proposing to be too restrictive. For example, there could be an automatic veto on the disclosure of identifying information placed on the file of adopted crown wards, and then, if a birth parent wanted that information, it could then be up to the birth parent to go before the Child and Family Services Review Board to argue why the court-ordered protection is no longer necessary. Then, if the board agreed, it could approach the adopted crown ward to ask, "Do you want to have that veto lifted?" In that way, at least the burden of proof would be on the right person and the protection would be maintained.

That's about all I want to say. I would be very happy to answer any questions or deal with any concerns you may have.

The Chair: Thank you, sir. We have about four minutes, so about a minute each. Mr. Arnott, you're first.

Mr. Ted Arnott (Waterloo-Wellington): Thank you very much for your presentation. It was very straightforward. I just want to express on behalf of my party our appreciation for your input in the process today.

Mr. Badertscher: Thank you, Mr. Arnott.

Ms. Marilyn Churley (Toronto-Danforth): Thank you very much for your presentation. We heard a similar presentation yesterday. I appreciate your overall support for the direction of the bill but also your suggestions on how to deal with an issue that we have been hearing about. The committee will be discussing that and seeing how we can deal with it.

Mr. Badertscher: It is a sort of technical issue. It's not anything that goes to: Should this bill stand or fall on its own? It's very much how to deal with something around the edges. After all, that's what this committee, all committees, are supposed to be doing.

Ms. Kathleen O. Wynne (Don Valley West): Thank you very much for coming down today. I just want to be clear, because the London coalition folks came down

yesterday and made a similar suggestion, but they were talking about amending section 48.4 by giving an automatic disclosure veto on situations where there had been violence, that that was a problem in the birth family. You're expanding it. You're talking about all crown wards.

Mr. Badertscher: There are people here representing children's aid societies who can answer this better than I can, but I understand that there may be some crown wards who were made crown wards where no harm had befallen them, and that's fine. That's why I say, yes, you could go this route of an automatic disclosure veto on these particular files. The burden of proof would still have to rest with the birth parent to show why that veto would need to be lifted. It would hopefully be a neat and clean way to do that.

I was not able to be here yesterday; I was maybe hoping against hope to be able to look at Hansard this morning. But I'm glad to know that this concern has been raised by others.

Ms. Wynne: Thank you very much for your time.

The Chair: Thank you very much for your presentation.

ADOPTION SUPPORT KINSHIP

The Chair: We'll move to the next presentation, Adoption Support Kinship. Wendy Rowney, please.

Start any time, please.

Ms. Wendy Rowney: Good afternoon. My name is Wendy Rowney and I speak to you today as the president of Adoption Support Kinship, a Toronto-based group representing both adopted adults and parents by birth and adoption. Our members strongly support the spirit and intent of Bill 183.

Bill 183 is about rights and it is about choice. It recognizes that adopted adults and birth parents have the right to identifying information about each other, but realizes that not everyone will choose to act on that right. It recognizes that whether we wish to pursue additional information, a meeting or nothing at all is a personal decision best made by the individuals involved.

1550

As an adult, I made the decision to learn more about myself and my past. My mother was a scared 17-year-old high school student when she lost me. Twenty-seven years later, she welcomed me into her home and told me that she had thought of me every day of my life. I doubt that I can put into words what it meant to me to receive information about my family, to see their pictures and to learn their names. After a lifetime of scanning subway cars for some sense of familiarity and staring into the mirror, trying vainly to discern from my own features those of the woman who gave birth to me, I knew where I came from and why I looked the way I did. This knowledge is my most precious possession.

I suspect that this desire to know more about ourselves is not peculiar to adopted persons. You have only to travel to the Ontario Archives to discover people who

have devoted days, months and even years to researching the convoluted turns of their own family histories. Each researcher is seeking to find her own ancestry, her own link with the past and her own people. It is this connection with the past on a personal level that adoptees seek. When adoptees speak of the need to find someone whom they resemble, what they are seeking is this connection with the people to whom they intrinsically belong.

In my experience, adoptees search not because they want to replace the people who raised them, loved them and helped them become the adults they are today, but because, deep within themselves, they need to know how they fit into the world and how they are connected to the past. This is why Bill 183 must be retroactive. It must apply to those of us adopted in previous decades, because we are the individuals living without this connection to the past.

We must deal with the results of secrecy every day. We cannot provide our doctors with informed answers to their questions; we cannot point to any people and say, "They are mine," by virtue of blood and ethnicity. The vast majority of new adoptions today are open. It is those of us already living in closed adoptions who need access to the information provided in Bill 183. We, like so many other Canadians, need to know our own personal histories, our own collective past. The documents hidden by the current laws hold the key to that past. Those of us who choose to turn that key in the lock know that we may not like what we find on the other side of the door. We know that the very fact that we were surrendered for adoption means there were problems surrounding our birth, conception and perhaps childhood. Independently, we decide that the need to know is greater than the fear of what we may find.

As adults, we make decisions, even ones that affect our lives and those of the people around us, every day. Having spoken with hundreds of adoptees, and being one myself, I know that one characteristic most of us share is fear of rejection, particularly rejection by our birth parents. We, like most people, are not eager to cause hurt to ourselves or to encounter repeated rejection. My own birth father has indicated that he does not have a place for me in his life right now. I have respected his decision and not attempted any kind of contact. However, knowing his name helps me to feel grounded and part of a collective past.

Few birth parents do choose anonymity. One need only scan on-line registries, visit the adoption disclosure register or look to other jurisdictions where consistently well under 5% of birth parents choose to remain anonymous, to see that most birth parents want to be found. They do not fear retroactive legislation, but are advocating for it alongside adopted adults.

As you know, retroactive legislation similar to Bill 183 has been in place in several jurisdictions for many years—in some cases, for decades. There have been no serious breaches of veto anywhere. Contact vetoes work. They balance the rights of those seeking information with

the desire of the small minority who seek privacy. A disclosure veto, the refusal to permit access even to one's name, fails to balance rights. Instead, it tips the scales in favour of anonymity, secrecy and shame.

Just as birth parents do not seek special protection under the law, adoptive parents recognize that their families do not require legal protection. Many adoptive parents support their children in the quest to find their identity. My own adoptive mother has told me that it never occurred to her that my brother and I would not want to know our birth mothers. She recognizes that learning more about our past cannot jeopardize the relationship we have built with her. She welcomes an end to the secrecy.

Granting access to information helps to lift the veil of secrecy covering adoption. However, the birth registration information cannot end this secrecy all by itself. Adoptees and birth parents must maintain access to background information if the openness that Bill 183 proposes is to be achieved. This information is often, as it was for me, an important bridge between the states of not knowing and knowing. If the spirit of Bill 183 is to be upheld, then it must be amended to allow adopted adults, their adult children and birth relatives to continue receiving this background information. We ask for your assurance that we will not lose access to this vital personal information.

Even armed with this information, some adoptees and birth parents may prefer to entrust the search to someone with more experience in this area. We call on the government to amend Bill 183 to license qualified individuals and to permit these individuals access to information currently used by employees of the ADR when conducting a search.

Finally, we must recognize that adoptees have two birth parents and that many fathers and their adult children wish to find each other. In the past, social workers, in accordance with current social practice, forbade unwed mothers to name the baby's father on the birth certificate. However, these same social workers then listed that man as the father in their file. Adoptees today should not be penalized because past social practice dictated that half of their birth certificate remain blank. The current system of contacting fathers named in the file has worked for many years. I ask you to allow it to continue working by amending Bill 183 accordingly.

I am here today to ask you to amend the laws governing adoption disclosure in Ontario. Laws in a democracy do change. In fact, they must change in order to remain relevant and truly reflect the society they are meant to protect. Laws governing other aspects of family life have changed even within my lifetime. If a couple married in 1975 and divorced in 2005, the settlement terms are based on the law in 2005, regardless of the fact that they didn't know what those would be 30 years earlier.

Retroactive legislation is not unknown when human justice is involved. When something is right, it is simply right, and all people must benefit, not just those born after a certain date. Birth parents never received any

binding promise of anonymity, and the vast majority of them support retroactive legislation. Adopted adults have the right to know who they are. The people whom this bill is meant to serve are saying loudly and clearly, "Secrecy hurts; it doesn't protect."

On behalf of the adopted adults, birth and adoptive parents whom I represent, I ask you to amend Bill 183 to allow access to background information, to license searchers and to recognize birth fathers. I then ask you to vote in favour of Bill 183. This bill is about the intrinsic human need to know who we are and whether our children are safe. It is about choice and recognizing that while some want information, others desire privacy. It is about ending unnecessary secrecy in adoption and recognizing that the need to know is human, natural and normal.

The Chair: Thank you very much. You have used all of the 10 minutes. There's no time for questioning. Thank you again.

DEFENCE FOR CHILDREN INTERNATIONAL-CANADA

The Chair: We'll move on to the next presentation from the Defence for Children International-Canada, Michelle Quick.

Ms. Michelle Quick: Good afternoon. Chairman, honourable members, thank you for giving me the opportunity to appear before you today.

Before I discuss my submission, I would like to briefly address some comments made recently by Ontario's privacy commissioner. The privacy commissioner stated that she had been contacted by birth parents who were in a great deal of distress because they were afraid that a secret past adoption would become known. Some of the birth parents have apparently told the privacy commissioner that they would commit suicide if their secrets are revealed.

First of all, as a person who was adopted, I know very well that the adoption process is painful—painful but not impossible. I truly hope, if there is a woman out there who said such a thing to the privacy commissioner, she doesn't give up and she finds support.

1600

Of course, we all sympathize with these birth parents, but we cannot make decisions about legislation from a gut reaction of sympathy. Imagine that I came to this committee today to say, "If you don't pass this bill and I can't find out the names of my birth parents, I will commit suicide." As responsible citizens, I would expect you to ensure that I received the help that I clearly need if I am in this much distress. But as responsible legislators, I would expect you not to make decisions about legislation based on my threat. Anyone who is distressed to the point of being suicidal will probably have a number of other sources of anxiety and stress in their life. Thus, there is no guarantee that giving in to such a threat will actually prevent that person from attempting suicide in the future. A person who is distressed to the point of be-

ing suicidal is not objective, and as legislators you must be rational and objective.

Anyone who knows of a person who is suicidal has a duty to act, to take these threats seriously, to treat it as an emergency and to ensure that that person receives medical attention immediately. I hope the privacy commissioner is aware of her responsibilities in this regard.

Finally, we should ask questions about the privacy commissioner's motives, given that she is acting outside of the mandate of her office. She has made a number of inflammatory and irrational statements in public. When I heard a radio interview earlier today, I thought I detected a note of desperation in her voice, so perhaps the privacy commissioner has a very personal connection to the issue, and this is what is driving her to act outside of the proper scope of her office.

I come before you today in support of Bill 183—

Interjection.

The Chair: Yes, Mr. Jackson?

Mr. Cameron Jackson (Burlington): Mr. Chairman, I am very anxious to hear the depositions, but if we're going to impugn this, I'd like to have sufficient time to ask the deponent which medical degree or which legal degree she's drawing upon to draw these extraordinary conclusions.

The purpose of these hearings is not to indict former deponents, any more than we would allow you to leave the room today and have someone come in here and trample on your good name.

With all due respect, I don't know you at all and I didn't really know Ms. Cavoukian, but I believe that the purpose of this hearing is for us to hear your personal experience. I would just like you to perhaps focus on that, and I believe it would be the role of the Chair to assist you in that regard.

Ms. Quick: I understand what you're saying—

The Chair: Madam, if I may, please; I will agree with Mr. Jackson on this. I believe yesterday we also raised this issue. Just to avoid us questioning each other, the objective here is to hear everybody's story. I understand that you are trying to balance what was said, but I would ask all of you—not just you but anybody after you—to tell us your story, and we will ask questions if there is time.

Before you proceed, let me recognize Ms. Churley. She has some comments on the matter.

Ms. Churley: Yes, and I hope we can add some time to your submission, because it's an important statement.

Look, I don't agree or disagree with what the deponent has said. My job is to listen to her story within 10 minutes, and for us to listen, just as we did with the privacy commissioner. We didn't tell her what she could or couldn't say, nor should we tell our deponents, within their time frame, what they can say.

The Chair: That is reasonable. I guess what I'm asking all of you is, can we concentrate on your matter and not criticize others, because they're not here to defend themselves. I understand that you may want to balance what was said, but I guess you can balance that

without making reference to a specific person. Would that be OK? So please proceed.

Ms. Quick: That was all I had to say with respect to the privacy commissioner.

As I was saying, I come before you today in support of Bill 183. We are interested in two controversial issues in particular. The first is the issue of contact veto versus disclosure veto. Bill 183 proposes a new system in which birth parents and adoptees can opt to have contact with the other party but can no longer veto the disclosure of the birth and adoption records to the other party. Some groups disagree with the government and will argue that this committee should make amendments to institute a disclosure veto.

The second controversial issue I'm going to discuss is the fact that Bill 183 dispenses with the government's obligation to offer counselling to birth parents and adoptees prior to the disclosure of birth and adoption records. Some groups disagree and will argue that this committee should amend the bill to make the provision of counselling mandatory.

In my view, this bill is about extending basic human rights to adoptees. If you add a disclosure veto to the bill, whether for past or future adoptions, it will effectively undo the main purpose of the bill, and the time and energy invested in this bill will have been wasted.

Before I get down to those two issues, I would like to explain how this is a human rights issue. As eloquently stated by the last speaker, this is very much a right to identity. We all have the right to know about our birth records and what is in our birth records. Having a sense of identity is something those who haven't been in this experience all very much take for granted, and I'd love it for all Canadians to be able to take that for granted.

The next issue I'd like to discuss is health. Interestingly enough, today I met a lady who is adopted. This issue is very pressing for her because her daughter developed a kidney disorder, and she found out years later from the adoption registry and from being able to meet her mom that it runs in the family. Had she known sooner, this would have been significant for two reasons: (1) Perhaps they would have been able to diagnose that there was a problem sooner; and (2) as the mother of the child, she actually didn't match as a donor, if a donor was necessary, whereas another member of the biological family might well have actually been a match.

There are any number of health issues that could come up. If you do any survey on heart and stroke or anything like that to find out where you stand, one of the questions is always, "Does it run in your family? What is the average lifespan of your parents and grandparents?" and things like that. People in my position can't answer those questions. So that basically addresses the health issue.

Finally, the other rights issue I would like to speak about is the best interests of the child being a primary consideration. Previously, only the concerns of the parents were taken into consideration, when it actually should be the child's that are taken into consideration.

I want to get back to the disclosure veto. A disclosure veto is not necessary for two reasons. The information in question is being treated as confidential and private information. When it is disclosed, it will be disclosed in quite a limited fashion and only to the persons most intimately interested in that information. It's not going to become public. So birth parents should have a reasonable expectation of privacy when it is just going to be a name revealed to the child—well, the adult, but it's their child. Secondly, the no-contact clause provides a layer of protection for people who do not want to have their lives disrupted. If birth parents ask for no contact, a child should still have the opportunity to learn about their other biological family members, if those people are interested. The birth parent should not be able to cut off their child's access to their entire biological family. It shouldn't be up to that one person to do that.

With respect to mandatory counselling, all people who have been through adoption and need some counselling ideally would be able to receive access to that quickly, but it can happen in a separate way. There is public health care, and people can access mental health services in their communities. They should be advised of how to do so upon finding out who their birth parents are; they should be advised exactly how to get help if they need it. The reason that we don't want it to be mandatory counselling is because then there are significant resources demanded of the government and it would take much longer to actually be able to match people.

I just want to finish by saying that my birth records are my own, as are those of everybody who was born in Canada. They do not belong to my birth parents, and the government should have no right to conceal them from me.

1610

The Chair: We have just under three minutes, so less than a minute each. Ms. Churley, you're first.

Ms. Churley: Thank you for your presentation. I think your last point is probably one of the most important ones for us all to remember: Even when we're discussing privacy and all of those things, it's your information that's locked away in a room. Adoptees are the only people in Canada, North America and probably most of the world who are discriminated against in this way. How does that feel?

Ms. Quick: Not very good, obviously. I would commend this government if they could do this. It's very significant.

Ms. Wynne: Thank you for your articulate support of the bill. We heard a couple of presentations yesterday from adoptees who wanted the right to have a disclosure veto, and I'm just wondering what your response to that would be. If you were who you are and you didn't want to know and you didn't want to be found, what would your response to that be?

Ms. Quick: I understand from the earlier presentation that people who are afraid for their safety should be able to have that.

Ms. Wynne: And they can in the bill now. But I'm talking about generally—if you just don't want that information and you don't want it to be shared.

Ms. Quick: No, I disagree, because if I did not want to have contact with a person, I could use the no-contact clause, first of all. Secondly, if they violated the law in that regard, then I would expect the law to protect me.

Ms. Wynne: So you think the protections are there.

Ms. Quick: If there were to be a veto, it should certainly be for the child who didn't choose to be born under such circumstances and adopted, not the other way around.

Ms. Wynne: So you would say that if there were going to be a disclosure veto like that, it should be asymmetrical. It should be for the adoptee and not for the birth parent.

Ms. Quick: That's right.

The Chair: Thank you for your presentation.

HOLLY KRAMER

The Chair: We'll move to the next presentation, from Holly Kramer.

Ms. Churley: Before we begin, could I recommend that we tell all the deputants—I just did it myself—that it's better to stay back from the mike, because they're very sensitive and we actually hear better.

The Chair: Just leave some space. You can start any time, madam. You have a total of 10 minutes.

Ms. Holly Kramer: Thank you very much for inviting me here this afternoon. My name is Holly Kramer. I'm an adoptee. I was reunited, through my own efforts, 26 years ago. I became involved in reform activism when my daughter was an infant, and I now have a grandchild who's in the second grade. Since 1979, I've helped thousands of adoptees and birth relatives to search and reunite, including some birth mothers whom I counselled at the time that they relinquished parental rights.

As I've explained at so many of these hearings, any alleged promise of confidentiality to birth or adoptive parents was never a covenant of anonymity. Everyone has a right to have their confidentiality protected from public inquiry. This was the spirit and intent of the law that sealed records almost 80 years ago. But confidentiality is very different from the concept of perpetual anonymity from the person who is adopted. The law provides a necessary and effective shield from public scrutiny, which Bill 183 would not change. Enforced anonymity is a later development in social work practice and is a derangement of the intent of a law which was enacted and persists, supposedly, in the best interests of the child.

There has been a good deal said in the House, the media and here yesterday about the Freedom of Information and Protection of Privacy Act vis-à-vis this bill. It's really hard for me to understand why people have so much difficulty telling the difference between confidentiality and anonymity. There is a difference.

Bill 183, as tabled, repeals the right of adult adoptees to access their background information held in CAS and licensees' files. Eighteen years ago, when the late John Sweeney was minister, a government bill codified our right of access to our background information and rescinded our parents' veto power.

Background information, as provided for under Ontario's existing CFSA, includes a description of the birth family's composition and tidbits about their hobbies and interests, academic achievements and employment, physical attributes and medical history circa the time of the adoption. It also usually gives the adult adoptee some idea of why he or she was relinquished or apprehended.

It has been the experience of the volunteer peer sector over 30-odd years that background information is vital in conducting discreet genealogical research and establishing contact with birth relatives in a respectful manner. Indeed, the Ontario adoption disclosure register has demanded that adoptees receive these profiles before they will facilitate reunion, even when a match results from independent, voluntary registrations.

Repeated government-commissioned studies and province-wide public consultations have consistently recommended granting adult adoptees unfettered right of access to all of their own birth and adoption information since the Taylor report was tabled 30 years ago. In BC, the UK and the many other jurisdictions that have granted adoptees parity with other citizens, people didn't have to give up right of access to contextual information to achieve this.

Adoptees cannot acquiesce by accepting access to our own birth information at the expense of access to our own background profiles. We cannot condone abolition of the ADR as the sole mechanism to connect birth siblings who often don't know each other exists. Also, to serve those who need medical information, as Bonnie Buxton clarified so well yesterday, or those who want to indicate a willingness to share updated information or to reunite but cannot, for any number of reasons—for example, money, physical or mental health, literacy, geography—conduct a discreet search.

The spirit and intent of Bill 183 may have nothing whatsoever to do with whether we search judiciously or reunite successfully or at all. The government may merely want to say: "Here, take this copy of your original birth registration. We have no further responsibility to you." If so, Bill 183 is about nothing other than saving money and reducing liability. A recent legal action for failure to disclose critical medical information to an adoptee cost Ontario taxpayers an estimated \$10 million.

While this bill is supportable in the main, a number of amendments are imperative. Adoptees must retain right of access to information about ourselves and our origins held in CAS and licensees' files; any new legislation must retain the ADR as a repository for voluntary matches and exchange of medical information, as well as access on demand—not mandatory access—to specialized counselling; and it's very important that Bill 183 grant adult adoptees retroactive right of access to our

own original birth information, as is enjoyed by every other Ontario-born citizen.

Every day, governments around the world make radical changes to laws in order to, as Dr. Garber reported in his 1985 commission to the Legislature, “redress the wrongs or limitations imposed by previous legislation.”

I urge you to amend this bill to truly reflect, as the preamble to every Ontario adoption law has always been premised, “the best interests of the child.” Otherwise, it will be only too clear that the agenda here is to make this issue go away, to get out of the adoption disclosure business altogether, and to abdicate all responsibility for the consequences of 78 years of legislated secrecy, denial and falsified records.

I am also compelled to caution members of this committee that 11 years ago, a similar bill passed through this standing committee and was recommended for third reading. It had the support of a majority of MPPs, perhaps most notably then-committee chair Charles Beer. Yet four MPPs managed to filibuster it until the clock ran out on the night the House prorogued. That was shameful. To allow such a thing to happen again would be vexatious and negligent.

The Chair: Thank you, madam. We have one minute each. Ms. Churley, you're first.

Ms. Churley: I should tell the committee that Holly Kramer was instrumental in finding my son, so she has a special place in my heart.

I did want to point out to the committee—and this can be a complex issue—that she's one of the many experts with us today. What she's saying is very important in terms of giving up one right for another. We've been fighting all these years to get access to original birth information, but this bill, unlike my bill and Tony Martin's and others', doesn't deal with or repeals the ability to get the contextual information, so-called “non-identifying” information, which is what I had, ironically, that helped us find my son. Without both pieces, you're really hindered in the search. It is imperative that that amendment be made, or we're going to have to keep coming back and fixing a flawed bill.

If you could elaborate on that briefly, and what it means in terms of search.

1620

Ms. Kramer: It's not just in terms of search. There are many people, myself included—I had my non-identifying information for a year. It took me a year to digest that information before I made the decision to conduct an independent search.

Reality is never the horrors that you can imagine. I think it's really important to adoptees who've never had any information about themselves growing up to know how old your mother was, how tall she was, whether she was Welsh or Irish, what languages she spoke, how far she'd gone in school, any of those kinds of things: to get that information and be able to take it and digest it. It's a first step. For some people, it's the only step they ever take. Why would you want to take that away from them,

hand them an original birth registration and say, “There you go. That's it; that's all you're entitled to”?

The Chair: Any comments?

Mr. Jackson: I too want to acknowledge Holly's efforts. I've known her for 20 years, and she helped me shape some of my strong views in this subject area.

Holly, first of all, I'm glad you put on the record—I raised it yesterday—the distinction between mandatory counselling and mandatory access to optional counselling. I sense that there is going to be a need for that. Help me to fully understand what your concern is with respect with what's in CAS files, and why you wouldn't get access to them under this legislation currently.

Ms. Kramer: The way Bill 183 is tabled right now, it repeals right of access to any information held in CAS files. It's just not there; they're going to wipe it out altogether.

Mr. Jackson: Do we know why the government did that?

Ms. Kramer: It's expensive.

Mr. Jackson: I just want you to flesh that out for me a little bit, please.

Ms. Kramer: I think it's a very expensive proposition. Ontario, you may know, has done more adoptions than all of the other provinces put together, and has kept very good records. They didn't really keep them for the purposes of sharing them with us when we grew up, but they have kept very good records, for the most part. The Ministry of Community and Social Services, the way that the CFSA is right now, gives a certain amount of money to each of the 54 or 55 CASs to prepare and send out that non-identifying history on demand to adult adoptees and birth parents. It's expensive. That's my answer; I'm sorry. I think they don't want to pay for—

Mr. Jackson: A brief answer. It may be expensive, but what's its importance to adoptees who want that information?

Ms. Kramer: That they have some context as to how they came to be adopted: Were they relinquished or were they apprehended? And the information I mentioned before: general information that everyone else takes for granted.

Ms. Wynne: I wanted to get the section that you are looking to amend, Holly.

Ms. Kramer: I didn't bring that with me; I'm sorry.

Ms. Wynne: Could you send that to us? When we go into the discussion about amendments, I'd like to know exactly what you're suggesting. Not being a lawyer, it would be helpful to me if you gave me the wording of your amendment.

Ms. Kramer: Sure.

The Chair: Thank you very much for your presentation.

GRAIG STOTT

The Chair: We'll move to the next one: Graig Stott, please.

Mr. Graig Stott: Good afternoon. My name is Graig Stott. I am a happily reunited adult adoptee and a psychotherapist. I have been working for more than 10 years with clients who are healing from the damage caused by the current adoption legislation that was brought forth here in Ontario in 1927.

When I was adopted, neither my birth mother nor I were consulted or represented by social workers, lawyers, agencies or anyone, really, who did not have at least some kind of conflict of interest around my adoption process. My adoptive family, my natural family and I have had no voice and no input around the laws that so profoundly impact all of our lives.

I am very glad to be here today and to have this opportunity to address Bill 183. Both my families feel that Bill 183 is better-balanced legislation that fairly and realistically represents all of our best interests.

It is imperative for the individuals and their families who are struggling to heal from the loss and trauma inherent in our current adoption legislation that this bill be retroactive. From my own personal and professional experience, it is clear to me that it is the unknowns, the secrets, the lies, the deceptions, and the misinformation that make healing from adoption-related losses more difficult than it needs to be. The bill will alleviate a lot of pain and facilitate much healing; healing that will reverberate throughout all our communities and all of society. Since more recent adoptions are often open adoptions, it is for the sake of the thousands of surviving families of the 1927 legislation still in effect that I reiterate: Bill 183 must be retroactive.

My own search and reunion has not been without its painful hurdles for my mother, for my adoptive family and for myself. My mother's story around my conception and subsequent relinquishment was hard for me to hear and come to terms with. She is very much like the elderly birth mothers that Ms. Cavoukian spoke of yesterday. My mother was a victim of a rape that resulted in my birth. My mother was terrified about letting me into her life and opening up those secret wounds, but, at the age of 75, and in her own time, she eventually did, and in her own time and in her own way, she chooses to share more and more of herself and her story with others in her life. She wasn't forcibly exposed to the world.

My adoptive family's fears of losing me and their not telling me I was adopted—I'm a late-discovery adoptee; I discovered by accident when I was 31—brought up much grief, unfinished business and other unresolved issues between myself and my adoptive family. We all had a lot to work through. Both my families, however, are in full agreement that the struggle and the efforts required to overcome our fears and work through our grief were more than worth it. Both my families now have closer, deeper and more heartfelt relationships—not perfect relationships, but certainly more real, more honest, more human and more humane. This is all part and parcel of healing the past and creating a healthier future.

I am here to speak not only for myself but also for both my families and say: It has not served us well to live

in secrecy, fear and denial. It was the lack of information that kept us controlled by our pasts. It was truth, information and facing our fears and facing each other that freed us. For this reason, we strongly recommend no disclosure veto.

Last night, I was telling a close friend about the privacy commissioner's concerns around the need for a disclosure veto. When I had finished speaking, my friend said, "We have always been at war with Eurasia." This, of course, is a quote you probably recognize from George Orwell's *Big Brother* book, 1984. In part, this book is about a fictitious war that keeps citizens, through the use of fear, in their place and obedient to the powers that be. It might be of use for us today to look at the degree of unnecessary and harmful fear that might be present in some of the concerns expressed at these hearings these past two days in regard to a disclosure veto. If we look at it from this light, the fictitious war between adoptees, adopters, birth parents, privacy versus anonymity, who has the trumping rights etc., doesn't really exist. We are all human beings striving to connect. We are striving to heal, to be seen and heard. None of us wants to be judged negatively or criticized. After all is said and done, we all want the same thing: to create and live in a world where we can freely give and receive love. It's pretty simple. So do we wish to perpetuate this insane, fictitious war? Do we really want a disclosure veto?

1630

As is evidenced with my own mother, I am not suggesting we force people to deal with issues they are not interested in or not yet ready to face. This would be arrogant, disrespectful and counterproductive. It doesn't work. In fact, it usually has the opposite effect—that is, it pushes people deeper into fear and denial, or increases their resistance to change and growth. What I am suggesting is that it is not in anyone's best interests to deter the possibility of healing with a disclosure veto. When the parties are ready, they can move forward, or not, in a timely and appropriate manner. It's their choice. This, by and large, works in a therapeutic setting, and the same principles can be applied in this situation as well; they can be translated into this legislation.

The contact veto has worked in all other jurisdictions; in some places, like Britain for example, for 25 or 30 years. As a therapist, I have a theory: I suspect that one of the reasons it may have worked so well for so long is that, as adoptees and natural parents, because of the nature of our loss and trauma, we are ultra-sensitive to rejection and sometimes to other peoples' feelings. Imagine your most intense fear of rejection. Just take a moment and think what that might be for you. Multiply that fear by 100 and you might get some idea of what keeps most adoptees and first parents from insensitively barging into each other's lives. It's something we are very unlikely to do. It is too terrifying for most of us. The pain of our original separation and the possibility of another such loss or rejection are still so alive in us that we feel we couldn't live through experiencing them again. We won't

risk it. This is one of the reasons why the contact veto has worked and why we do not need a disclosure veto.

Those who are not directly impacted by adoption and have not had this as their life experience may find this hard to understand or relate to. But please listen today to those of us who have fully lived, survived, reunited, healed, gone the distance and come out the other end with our adoption experiences. We are here today. We do not need people with non-adoption life experiences and/or fears to speak for us.

My mother, at 78, has shared stories with me she has never shared with anyone else: stories of my conception, her pregnancy and my birth. My presence in her life today has helped her move away from living her remaining years in unresolved grief and fear. She is no longer a victim.

Her presence in my life has alleviated a degree of daily, moment-to-moment fear and anxiety that I assumed everyone felt and that I thought was normal.

The weight lifted from our shoulders and hearts and the healing that has reverberated throughout both my families is nothing short of miraculous. This is what healing is. It can be painful and frightening. It takes guts and courage. I am asking you here today to have the courage to move forward with this bill and give more people like me, like my mother, like my adoptive family, the chance to create their own miracles. A disclosure veto will not help these people manifest their own miracles.

My clients', my families' and my own personal experiences have all taught me that knowing the facts—even if they are disturbing or unsettling—and facing the truth at least gives some hope of healing, some hope of resolution and some hope of peace. Not knowing decreases this hope. Not knowing perpetuates living in denial; it perpetuates unnecessary fear, shame, lack of trust and identity confusion. Not knowing does not make these problems go away or heal by themselves over time. On the contrary, left unaddressed as unfinished business, this all gets exacerbated over time. It is a societal cancer. It negatively undermines all our relationships and passes on from generation to generation. Not knowing does not permit authentic, loving, honest human contact. How can it, when it is built on misinformation, secrecy and unknowns? I am living proof of this; both my families are living proof of this; my clients are living proof of this, everyone in this room is living proof of this. How much more proof do we need? Now is the time for us all to take responsibility for this unnecessary, ongoing grief. Please pass Bill 183 without a disclosure veto.

The Chair: Thank you very much for your presentation, Mr. Stott.

BASTARD NATION: THE ADOPTEE RIGHTS ORGANIZATION

The Chair: We'll move on to the next presentation, from Bastard Nation: The Adoptee Rights Organization. You can start any time you're ready.

Ms. Natalie Proctor Servant: Good afternoon, members of the committee. My name is Natalie Proctor Servant. I am an engineer by training, a new mother to three-month-old Zoé back there, and I am also an adoptee. I am here today to speak to you in my capacity as the eastern Canada regional director for Bastard Nation: The Adoptee Rights Organization.

Bastard Nation was formed in 1996 with a single goal: to restore the right of adult adoptees to have unconditional access to their own birth information. Our members are adoptees, adoptive parents, birth parents and others connected with adoption. Several of our members were instrumental in achieving unconditional records access in Oregon, Alabama, and New Hampshire.

Since we are an adoptee rights group, our recommendations for this bill only deal with adoption disclosure for adult adoptees.

Our main objection to this bill is that it contains a contact veto with a potential fine of up to \$50,000.

We are pleased that the Ontario government is considering legislation that retroactively gives all adult adoptees access to their original birth certificates. Since it has been decades in this Legislature since a government has been willing to take this issue on, we want to make sure that Ontario gets it right this time.

Currently, Bill 183 will allow birth parents to file a contact veto with a maximum fine of \$50,000 against the adult adoptee. Bastard Nation strongly disagrees with this measure. A contact veto is essentially a never-ending restraining order that can be placed against the adoptee by a birth parent simply because they are related. When the law that is currently in place was debated, a past member of this Legislature said that it was like Big Brother telling us what we may know and what we may not know. With its contact veto, Bill 183 would only change the law to one where Big Brother is telling us who we may contact and who we may not contact.

Bastard Nation wants the \$50,000 contact veto removed completely. You might think that this sounds extreme, but we're not asking for some radical untried type of legislation. Retroactive open adoption records legislation without any vetoes at all has been working successfully in England since the mid-1970s. Many other countries in Europe and around the world also give adult adoptees unconditional access to their original birth certificates. Not only has this been working for decades in other countries, but there are other jurisdictions even closer to us that have put this legislation into effect recently: Oregon, Alabama and, just this past year, New Hampshire, for a total now of five US states that have retroactive unconditional open adoption records.

I have heard others argue that we need vetoes in the legislation for it to work. We don't. We have a society that is based on the same laws as England, and veto-less legislation is working there. It was implemented retroactively decades ago. What is so different about Ontario's history of adoption or current culture that makes vetoes necessary here but unnecessary in England? There's nothing.

Dr. Garber said, in his 1985 report on adoption disclosure: "Adoptees, as any other group, may have among them some few who would have criminal intentions. The law cannot be prescriptive or presumptive about adult adoptees' behaviour without evidence that they do indeed behave this way in significant numbers. No such evidence exists."

A contact veto that is applied against an adoptee treats them criminally even though the adoptee has done nothing at all.

Bastard Nation has a solution. Instead of a contact veto, Ontario should use contact preference forms. Instead of forbidding contact, contact preference forms allow the party filing them to express their positive or negative desire for contact. Contact preference forms do not hinder access to records and they do not restrict a law-abiding citizen from contacting certain people. If a contact veto is like a restraining order, a contact preference form is like a letter. Someone's reasons for not wanting contact may be permanent or they may be transient. One person's desire not to be contacted may disappear in the face of another person's reason for wanting contact. A contact preference form allows for give and take, for changes over time. The government should not be in the business of regulating contact between law-abiding citizens. Contact preference forms get the government out of this business. Contact preference forms are currently in use in Oregon, Alabama and New Hampshire.

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In conclusion, I would like to reiterate that Bastard Nation is a single-issue organization working to restore the identity rights of adult adoptees. We have one main issue with this bill: the veto. What this bill, in effect, does, is say, "OK, now we recognize that you have the right to know who you are. In exchange, we are going to take away your right to be presumed innocent until proven guilty, your right to be free of a restraining order, unless there is some reason to believe you have done something wrong." I do not want one right to be returned to me only if I agree to give up another.

Treat adult adoptees as full citizens. Remove the contact veto and the \$50,000 fine from this bill and replace it with a contact preference form. Thank you.

The Chair: We have one minute each.

Mr. Arnott: I just want to express my appreciation for your presentation today. It's been very helpful in terms of the overall discussion that's taken place at this committee, yesterday and today. Thank you.

Ms. Proctor Servant: Thank you. You will actually find copies of the contact preference forms at the end of the report.

Ms. Churley: Good to see you again for the nth time. Nice to meet Zoé today.

We've been through this before. Of course, what happened when I presented my bills in the past was that I discovered that in order, even politically, to get it on the floor of the House and actually get majority support, I had to have the contact veto. I actually agreed with you,

as you can recall, but I also made in really clear that, because of the fears and concerns, people needed to have that comfort in there. Of course, now there's pressure to add a disclosure veto on top of that. So I guess my question would be, given the concerns and fears that people have and a lot of legislators have, how would your suggestion cover those fears? What can you do to reassure people that we don't need the contact veto?

Ms. Proctor Servant: The fears are unfounded. The legislation I'm recommending is working well in other jurisdictions. New Hampshire just opened their records last year, unconditionally. Alabama and Oregon did this in 2001. England did this in the mid-1970s. Most of Europe has the type of legislation I'm talking about. North America is not that radically different that this can't work here. I defy you to come up with ways that this isn't working in other jurisdictions.

Mr. Peter Fonseca (Mississauga East): Thank you for your presentation. Can you take us through a little bit on how those contact preference forms work in Oregon or one of the other states?

Ms. Proctor Servant: Basically, depending on the state, someone who does not wish contact, or someone who wishes contact and wishes to express that, downloads the form, fills it out—they can also fill out medical information—and they file that. When the adoptee requests the birth certificate, that form is passed on to them. So they get the information with reasons for wanting contact, not wanting contact or wanting contact through perhaps an intermediary. It takes the form of a letter. At that point, the ball is in the adoptee's court as to what to do.

Mr. Fonseca: And those could be changed at any time?

Ms. Proctor Servant: Absolutely.

The Chair: Thank you for your presentation.

ONTARIO ASSOCIATION OF CHILDREN'S AID SOCIETIES

The Chair: We'll move to the Ontario Association of Children's Aid Societies.

Mr. Marvin Bernstein: My name is Marv Bernstein. I'm a lawyer by profession. My position is director of policy development and legal support at the Ontario Association of Children's Aid Societies. I'm here with Margaret O'Reilly, who is manager of adoption services at the Catholic Children's Aid Society of Toronto.

I'd like to start off by indicating that the association unequivocally supports the underlying philosophy behind Bill 183 and takes the position that it is timely to bring about greater openness in the adoption disclosure process. It would indeed be unfortunate for this bill not to go forward after all of the adoption disclosure bills that have come before the Legislature in recent years. That would be six private members' bills and one previous government bill in the past 11 years. We'd also like to acknowledge the efforts and support that Ms. Churley has spear-

headed in terms of some of the previous private members' bills, and we thank you for that.

We're concerned about disclosure vetoes, retrogressive compromises being suggested, built-upon notions of retroactivity. These are not solutions that are proportionate to the scope and reality of any presenting risks and are entirely incompatible with the fundamental human rights of all adopted persons that are entrenched in the United Nations Convention on the Rights of the Child. There isn't enough time, but in the written submission there are a number of bullet points explaining why a disclosure veto is completely unnecessary.

The OACAS is of the view that Bill 183 contains many positive features but that it could be substantially strengthened by the further amendments being proposed by the association. It is absolutely critical that these proposed amendments be incorporated into the bill in order to address the concerns that we've set out in our submission and to prevent the more progressive elements of the bill from being compromised. What we don't want to see, through a number of proposed repeal provisions in the bill, is infrastructure that's working well in terms of the support and services being provided by children's aid societies, the supports and functions of the current adoption disclosure register, being eliminated.

I just want to take you through the recommendations and a number of the other proposed amendments that are being advanced today by the association to strengthen this bill, whose time has arrived.

(1) First of all, subject to the further proposed amendments that I'm going to be speaking about very shortly, Bill 183 should be supported and enacted, as it reflects a positive shift toward openness and will bring Ontario into line with, if not surpass, similar adoption disclosure reforms in other jurisdictions. Again, there isn't enough time to go through all of the components—and you're hearing from a number of other groups and individuals making representations that are reinforcing the value of these absolutely necessary provisions—but I would ask the committee, what's wrong with going past what other jurisdictions are doing in Canada? What's wrong with taking a leadership role and moving the yardstick to do the right thing?

(2) The second recommendation is that Bill 183 be amended so as to clarify what information will be available to adopted persons and birth relatives and ensure that they will still have access to their non-identifying social histories, with no fees attached. We've heard that the provision of original birth registrations is only the beginning of a process. It's an event. It doesn't provide the individual with the contextual information that's really necessary.

(3) That Bill 183 be further amended so as to retain the operation and functions of the adoption disclosure register. For example, British Columbia and Newfoundland have kept their registers in place at the same time as they've enacted more progressive adoption disclosure legislation.

(4) That Bill 183 be further amended so as to ensure that adopted persons, birth relatives and adoptive parents on behalf of minor adoptees will still have access to priority searches on the basis of health, safety or welfare concerns, and that the adoption disclosure register will be the vehicle to continue to provide this service. Under the repeal provisions, that power would no longer be in existence. There would not be an adoption disclosure register. That provides a very valuable service.

(5) That Bill 183 be further amended so as to require the birth parent to provide all relevant medical and genetic information as outlined in the bill, except that it need not be briefly stated before being entitled to file a no-contact notice. We are concerned with the permissive approach being taken in the bill to the provision of this information and view such information as being part of the adopted person's birthright and critical to the adopted person's physical and emotional well-being, as well as to the holistic health of succeeding generations.

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(6) That Bill 183 be further amended so as to authorize, in addition to the existing list of applicants, a new category of applicants who can seek a nondisclosure order from the Child and Family Services Review Board, namely, adoptive parents on behalf of a minor adoptee, with such orders continuing in effect until such time as varied by the Child and Family Services Review Board, upon application by the adopted person, after attaining his or her 18th birthday.

We've heard from some of the other persons making submissions that there seems to be a gap. This is our recommendation in terms of how to address the particular mischief that's being presented. The answer is not to stigmatize a whole group of birth parents whose children have been found to be crown wards; the answer is not to put adoptive parents into the shoes of their adult adoptees. The answer is to provide more flexibility and, while the adoptee is a minor, to provide that information. It will stay as part of the order unless it's vacated or varied upon application by the adopted person.

(7) That Bill 183 be further amended so as to authorize CASs to disclose relevant information related to risk of "significant harm," which is the language of the bill, to an adult adopted person or the adoptive parent of a minor adoptee or minor sibling, in order to assist them both in respect of making a decision about whether to apply to the Child and Family Services Review Board for a non-disclosure order and also in respect of providing all relevant information in support proceeding with such an application.

There is nothing in the bill that explains how information gets transmitted that may be in a file that a children's aid society holds. How does that get transmitted to an adult adoptee? How does it get transmitted to adoptive parents of a minor adoptee? We need some language that's going to authorize that kind of disclosure.

(8) That Bill 183 be further amended so as to ensure that adopted persons and birth relatives will still have the option of free voluntary counselling and will still be able

to access free assistance in respect of contacting the other party.

We're not suggesting that the counselling be mandatory but that it be provided on a voluntary basis. The existing language of the bill makes no reference to that even being contemplated.

(9) That Bill 183 be further amended so as to ensure that other birth relatives, such as birth fathers, birth siblings and birth grandparents, will still be able to register for contact with the adopted person and that the adoption disclosure register continue to provide this service.

We've got a very limited definition of "birth parent."

(10) That Bill 183 be further amended to provide for equal treatment of Ontario-born adopted persons legally adopted outside the province of Ontario.

One of the limitations of the bill is that these excellent rights, these enhanced rights, only accrue to those adoptees who have had their adoptions finalized in Ontario. What about other adopted children who were born in this province who have had their adoptions finalized elsewhere? They should be in the same position. We shouldn't have category A of one group of adoptees and category B of another.

I'll leave the other two recommendations with you.

The Chair: Thank you for your presentation. There is no time for questioning.

DAVID BISHOP

The Chair: We'll move on to the next presentation, which is David Bishop, please.

You can start any time, Mr. Bishop.

Mr. David Bishop: Chairman and committee members, thank you for this opportunity to address you this afternoon. In my brief time, I will attempt a few things; namely, to explain to you what it's like to be adopted and to share with you what it's like to be reunited under the current system. I was adopted at 13 days of age by my parents and I was reunited five years ago with my birth mother. Finally, I would like to say, as a member of the adoption community, that I am anxious for this bill to become law in the next couple of weeks.

One of the main frustrations we feel being adopted is trying to make others understand what it's like to be adopted. I don't imagine any of you on the committee are adoptees, so let me tell you a little story about what it's like. I'm sure some of you have been to Europe and have been speaking English somewhere, and someone has come up to you and said, "What part of the United States are you from?" Just before you answer—just before that feeling of indignation, that feeling of anger, that feeling of, "How can he confuse me with an American? I'm a Canadian"—that feeling before you speak is what it's like to be adopted; that's just a tiny element. We look like you, we sound like you, we act like you; however, we're just a little bit different. We've grown up not knowing anything about who we are.

Now, the truth is what is, not what should be; what should be is a lie. If you were adopted in Ontario in the

last 80 years, your whole life is what should be: You should be lucky you were adopted; you should get on with your life; everything's fine. Oh, really? Then why am I always scared? I thought everybody was always scared, but of course, not any more. I'm reunited now.

When I was 26 years old, I decided to search for my birth mother. I contacted the proper children's aid and then got on the waiting list of the adoption disclosure registry. This is not a decision I took lightly. I really wasn't that curious up until then. I had no idea that this would actually change my life to the extent that it did. I emphasize the fact that I was 26 years old when I decided to do this. I contacted children's aid and then contacted the adoption disclosure registry. On May 31, 2000, I was reunited with my birth mother and two sisters. This is the most courageous, the best thing I have ever done. I did very well in university. I went very far; I've had my own business; I've done lots of things. Everything pales in comparison to this. Remember that charming feminist part about, "The personal is political"? Remember when people used to say that? This is exactly what this is like.

If you've been listening closely—I don't know if I've mentioned this yet—I started this process when I was 26. I was reunited on May 31, 2000. First I was 26; then I'm 35. I am from Toronto. I was adopted from the east end of Toronto to the west end of Toronto. The difference between 26 and 35 is nine years. Did everybody get that? It took nine years. I followed all the rules; I did exactly what you're supposed to do. I waited and I waited and I waited, and then I called the ADR and they said, "No, no. You're on the waiting list. Don't worry." Then I waited a little bit more. After one year of this, I got non-identifying information, the first thing I ever learned about myself, sitting there in my room with my wife holding this stuff about me—unbelievable. I learned that my birth mother kept an older sister. I have an older sister? It was shocking. This was not like what it usually is in the adoption world.

Let's flash forward a little bit. That's all I had for eight years, and I got that after a year. I really wish the members of the panel could experience what Marilyn and I have experienced later in your life. This happened to me when I was 35, and it's just too big to describe; however, I'm going to try. When I got really close to reuniting, what I had to do was write a letter to my birth mother. In this letter, I couldn't reveal my name. I had to send this letter to the ADR. They read it. I was 35 years old, I had to write a letter and they read it. Then they passed it on to my birth mother. My birth mother wrote a letter and sent it to them. They opened the letter, read it and then passed it on to me. My birth mother agreed to meet me right away, but that's just the way the process goes.

I mentioned that I was 35, and I still resent that something that is intrinsic to who I am was mediated through a government agency. I had to bend like a pretzel to make this happen. I had to keep my mouth shut and be as nice as pie to the ADR worker because that was the only game in town. My mother was a widow at a very young age, so the name on my birth order is not her maiden name.

There's no way I could have found her without the information supplied by the ADR. If I had had her maiden name, which was always hidden from me in my own best interests, I could've opened the Toronto phone directory. There are five names like that. Those five people are my uncles. I could have called one of them and I wouldn't have had to wait nine years.

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When one is reunited, the language no longer reflects your reality. On Christmas Day, I must explain to family and friends that this is my sister, and this is my sister, and they've just met once or twice before. When my nieces ask me, "Uncle David, are we related?" I say, "Of course you are. You're cousins, through me." It was Mother's Day a few weeks ago, and you've all heard of the language that says you can only have one mother. Well, on Mother's Day you might buy a card for your wife, who's also a mother, but you only buy one card. Well, for the last five years, I buy two cards: one for my mother and one for my mother.

The same way that I can reunite two families and make them one at Christmas is the way I can reunite this Legislature right now. In the late 1980s, it was the Conservatives, oddly absent, who started the ADR—

Interjection.

Mr. Bishop: Ah, there you are.

Mr. Arnott: Yes.

Mr. Bishop: That's all right. You're allowed, I guess.

It was the Conservatives, when they used to emphasize the word "progressive" instead of "conservative" in their name, who had a hand in starting the ADR, who opened it up. Throughout the 1990s, it was the NDP and Marilyn Churley who gave us private member's bill after private member's bill, and we all know the fate of private members' bills, or most of them. We got close once, only to be shut down, again by someone from your party. Alas.

Here we are now: It's the Liberals. I've been here before and I've seen people change their stripes. Suddenly, you're with me. This is nice, being on the side of the government. There have been certain people who weren't too big when it was her bill. Oddly enough, we're all on the same side here. So now you're trying to really open the door. For that, we're grateful.

I want this bill to be retroactive, with no disclosure veto; an amendment that would include the non-identifying information. During the privacy commissioner's screed yesterday, she said that in the provinces where they already have this type of legislation, only 3% lodge disclosure vetoes. You are legislators; when do you ever hear the words "97% of anything"? Why is the tail wagging the dog only on this law? She said something interesting: "The silent minority." Yeah. The words that you're supposed to use are "silent majority." A minority is silent because it's a minority. There's 97% and there's 3%. That's why it's silent. We've been quiet long enough. This hasn't worked for us. The tail doesn't wag the dog; the dog wags the tail.

Maybe you can tell me how a province like Ralph Klein's Alberta is more socially progressive than Ontario. How does that work? They are. They have this law and we don't.

In conclusion, I urge you to get this law passed as soon as possible. Please don't make me come here four years from now just to argue the same thing again.

The Chair: Thank you, Mr. Bishop. You've used your 10 minutes. The 10 minutes are over, and we thank you for your presentation. Stay tuned and you'll find out, I guess, like everybody else.

SANDRA WILLISTON

The Chair: Sandra Williston, please.

You may start any time.

Ms. Sandra Williston: That's a tough act to follow.

Members of the standing committee on social policy, thank you for affording me this opportunity to express my views on Bill 183, the Adoption Information Disclosure Act, 2005.

March 29, 1927, was a monumental day in Ontario. On that date, research shows that at the request of adoptive parents, a law to seal adoption records was enacted. As a result, the 17th session of the Ontario Parliament legalized discrimination against a particular group of Canadian citizens, that being adoptees and their birth parents. This took place 78 years ago—almost a full century back in time. This law pre-dates World War II by 13 years, the Industrial Revolution, the discovery of the polio vaccine, the first freely programmable computer, the Depression era, the discovery of penicillin and television. It is now 2005. The world has progressed significantly. Even the Berlin Wall has been torn down, yet Ontario adoption law has stood deathly still. This 78-year-old law remains untouched, still governing adoption information disclosure in Ontario today.

Many countries and jurisdictions have removed the stigma of childbirth outside of marriage and brought it out of the closet of shame and blame; not so with Ontario. Please enlighten me, ladies and gentlemen: What is so shameful, what is so positively horrifying about bringing a life into the world that this fact has to be closeted for all time; that a make-believe world has to be created for adopted children; that these children's original names must be falsified; that their heritage and culture must be erased? They can never know the truth of whence they came. Why? There was no crime. There was no big sin in bringing a life into the world. We mothers will no longer allow you to make us wear the scarlet letter of shame.

It is positively disturbing that anyone in this day and age continues to perpetuate the outrageous lie of ironclad confidentiality. There is not a single, solitary document in existence in this entire country, coast to coast, to support anyone's position that birth mothers—I personally prefer "natural mother" but I'll use "birth mother" because that's the language in the document—were promised confidentiality, yet this lie is literally clung to, white-knuckled. If some social service workers did make

statements to birth mothers regarding confidentiality, then those individuals clearly acted outside the scope of their authority. How can any legislator rely on this and endorse it? It is common knowledge for those who truly seek truth and justice, for those who truly wish to educate themselves on this topic, that birth mothers have never been promised bona fide confidentiality. All adoption documents in Ontario reference the severance of parental rights. The words "promise of confidentiality" appear absolutely nowhere in any of these documents, and I challenge anybody here to prove otherwise.

For those passionate about wanting to keep past promises, I was in fact promised that my full name and my daughter's full name—the name I gave her—would appear on her adoption order and, by virtue of having that identifying information, she could find me if she so chose when she was an adult. That promise, as I learned in reunion, was totally false. For the legislators whom I witnessed speaking so passionately in the House about a week or two ago about their need to keep past promises that were made, I invite you to contact me to advise me on how you plan to stand up for me in having received this promise. My daughter's adoption order identified me only as the first letter of my surname and contained no reference to my daughter's original name.

Even if some were verbally promised confidentiality, those who made such promises were clearly acting outside the scope of their authority. What kind of world order would we have if you, as lawmakers, had to acquiesce to all those with no jurisdiction, no authority, and no right to make contractual promises? Relying on hearsay that false promises were made to a few and clinging to this as justification to keep records closed for all eternity to all is unconscionable, a travesty, a crime on those directly affected.

Let us stop using language that softens the truth. Keeping adoption records sealed is legalized discrimination. It is social apartheid. Knowledge and ownership of one's own original identity is a basic human right, a right taken for granted and enjoyed by all other Canadians.

I was present yesterday to hear the privacy commissioner of Ontario's presentation. It was deeply disturbing. This is my viewpoint—

The Chair: I will let you say it, but I just want to make sure that we don't go over—if you can, make reference to what I said earlier.

1710

Ms. Williston: Pardon me?

The Chair: If you can keep in mind what I said earlier at the beginning of the meeting, that we don't want—

Ms. Williston: She gave a public presentation. This is my personal opinion. I haven't said anything offensive yet, have I?

The Chair: I didn't say that you did. I was just trying to caution you before a member of the committee would intervene. Please proceed. I am not stopping you.

Ms. Williston: Thank you very much.

It was deeply disturbing to me that Dr. Cavoukian not only presented on the weight of her official capacity as private commissioner about a bill that lies outside of her jurisdiction—I checked this with her office—but, in my view, presented a totally unsubstantiated case to keep records closed built solely on hearsay, unsigned letters, unsigned e-mails and anonymous phone calls. If there is a single individual in government whom the public should be confident that they could disclose their identity to, I think it very reasonable that it would be the privacy commissioner.

I made a call to the Office of the Premier today and was told that anonymous communications are tracked, counted and filed. Nothing else can be done with them. I expect that this same treatment must be afforded in this instance. It is unthinkable that elected government officials would not discount all anonymous communications of any kind.

I implore you to move Bill 183 through the House to a vote with the recommended amendments, as outlined by the representatives of the Coalition for Open Adoption Records and the Canadian Council of Natural Mothers, who are speaking here today and who I consider represent me.

Due to time constraints afforded to me to present, there is no opportunity to outline the recommendations in detail, so I will just note that the above-noted organizations speak for me in this regard:

—Adopted adults receive copies of the full contents of their adoption files held by the children's aid society and the adoption disclosure registry.

—The inclusion of natural fathers in the identifying information given to adopted adults. Access of adopted adults to this information.

—Access to non-identifying and identifying information for adopted adults, children of adopted adults, natural parents and their extended families, aunts, uncles and siblings.

—Provision of a "no contact" preference.

—Most importantly, retroactivity: It is imperative that this bill be retroactive for it to be meaningful in any way.

It is long past time to restore adult adoptees' basic human rights: the right to their identities; the right to know their origins, their culture and their current medical information.

Voting for Bill 183 does not legislate reunion. Bill 183 doesn't legislate anything beyond having one's own unaltered birth records and adoption information, something that rightfully is owned by those named. If adults so choose to take it further and forge a reunion, then so be it. Adult relatives electing to meet adult relatives: That's all it is. Freedom of association is entrenched in the federal Charter of Rights, after all.

March 29, 1927, was the date that Ontario stood still regarding adoption information disclosure. I implore you, please move Bill 183 through to third reading and a vote in the House. Similar legislation around the world has no reported cases of the problems that we've heard will take place from opposers of this bill.

You have the power to rectify a travesty that took place in the previous century. It is right that you do so. It is just that you do so. It is long past time that you do so.

As a final comment, I would like to extend profound and sincere thanks to Marilyn Churley, who blazed the trail for us to be here today, and to the Liberal Party and Sandra Papatello for having the courage to take a firm hold on the gauntlet passed from Marilyn's hands. Thank you, Marilyn.

I sincerely thank you for listening. I will hold trust that you have heard.

The Chair: You used all of the 10 minutes so there's no time for questioning, but thank you very much for your presentation.

Ms. Churley: On a point of order, Mr. Chair: I think it's important to make the point, on the record, that the privacy commissioner yesterday chose to come forward and make a very public statement expressing her point of view but also going beyond that in terms of reading various letters. I believe it is the right of the deputants today, because she is on the public record, to say what they wish in terms of responding to her presentation yesterday. After all, it is on the record.

The Chair: I don't have any problem with what you said. I have a little speech here which I could read, but I thought it was easier. I didn't want the deputant to go further than she did. What she said, in my opinion, is acceptable. But as you know, there is a limit and a potential for liability depending on the language that people use. We are not potentially liable because we are MPPs, but unfortunately the deputant could be, and it's my job to make sure that I warn them before they say something, because it's on TV. It's a matter of public record now; it's written. If somebody goes overboard, then he or she could be in trouble. As the Chair, I am trying to do my best to make sure that that doesn't happen. Nevertheless, I think what was said is within reason, and I don't have any problem.

Ms. Churley: That's fine. I think it's important that as Chair, if there are liability issues, people be warned about that. Otherwise, there should be no concern. I understand, but it wasn't clear.

JULIE JORDAN

The Chair: The next deputation is from Julie Jordan.

Ms. Julie Jordan: Thank you for your time today. I'm not going to waste my 10 minutes telling you my life story. I am adopted. I was adopted in 1971, one year after the laws were changed concerning adoption orders. I only have an initial of my surname and a series of numbers on my adoption order because I was born one year after those laws changed. I consider that to be age discrimination. I just wanted to state that.

Instead of telling you a personal story, I'm going to take my time in reading the Universal Declaration of Human Rights. I have copies that I've given out to everybody here for you to read for yourself.

Article 1 of the Universal Declaration of Human Rights states, "All human beings are born free and equal in dignity and rights."

Article 2: "Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Article 3 of the Universal Declaration of Human Rights: "Everyone has the right to life, liberty and the security of person."

Article 4: "No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms."

Article 6: "Everyone has the right to recognition everywhere as a person before the law."

Article 7: "All are equal before the law and are entitled without any discrimination to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination."

This is the United Nations bill of human rights. These are my rights. Every human being has these rights. It doesn't say, "Adoptees are excluded from these rights." They're for everyone.

1720

All persons have the right to know whether or not they have been adopted. Furthermore, no one has the right to withhold such information from another person.

All persons have the right to an identity, and to know what their identities were at all stages of their life. Pursuant to this, all adults have the right to obtain and possess all government documents that pertain to their historical, genetic and legal identities, including:

- their legal names at all times during their lives, both before and after adoptions have taken place;
- their place and date of birth;
- the identities of their natural parents;
- the identities of their natural siblings, grandparents and other family members; and
- all records pertaining to them, that pertain to all parts of their lives, both before and after any adoption took place.

As all persons have the right to freedom of association, adults who have been separated from their families through adoption have the right to establish communication with their original families, respecting any contact preference requests made by individual members.

You have this all in front of you. I'm free for questions.

The Chair: We have about four minutes. I would start with the government. Any questions?

Mr. Khalil Ramal (London-Fanshawe): Thank you for coming and supporting the bill, and for talking about your personal story. You think this bill, as it is, is good enough to fulfill your needs and look after your goals?

Ms. Jordan: I'm against a disclosure veto. I think that that goes against what I just read. I'm against a contact veto with a fine. Bastard Nation has given you a form about a contact preference. I'm all for that, but not a

\$50,000 fine. I think that that is discriminatory, and it's humiliating. We're human beings. We're not criminals just because we were born and put up for adoption.

Mr. Ramal: But what do you say to the people who came who were watching the channel or heard about what was going on yesterday? They're talking about some kind of privacy. They don't want their file to be disclosed.

Ms. Jordan: It doesn't exist. I was on the adoption disclosure registry for over 15 years, waiting for my search. Just last year, my search was completed. The CI, the confidential intermediary, the day she told me that she had found my birth mother, said, "I just talked to your birth mother." I said, "How was she? How did she respond to this?" She said, "She was surprised that you weren't calling her yourself." Why, if she expected confidentiality and if there were promises made that I would never find her, would she be asking why I wasn't calling her myself? She had no idea that I did not have her name and that I had to go through the government. She had no idea about the adoption disclosure registry. I waited 15 years.

Ms. Churley: Thank you for your presentation.

Ms. Jordan: Hi, Marilyn.

Ms. Churley: Hi. I think it's good that you brought this, by the way, for everybody to see, because it keeps being referred to a lot. I think what you've done is raise some really important issues vis-à-vis what the privacy commissioner and a few others had to say. First of all, some of us birth mothers were literally lied to about what information would be provided to our children, should they desire to look for us as adults, and then to find out with shock and horror once we find them that they weren't given that information. So there's that.

Secondly, I think what you said is important in that we have to just put on the table this whole element of saying to anybody who comes forward, "Oh, aren't you brave, aren't you courageous to bring your shame forward and tell the world." It's all couched like it's a shameful thing that happened to the birth mother, and the adoptee in a way. What we're trying to say here is that there's nothing shameful about it.

Ms. Jordan: I'm not ashamed of my birth status; I'm proud of it.

Ms. Churley: The third thing I want to say is that what you said is important, that there are so many people finding each other anyway, with no such thing as a contact veto within the existing laws.

Ms. Jordan: Or a contact preference.

Ms. Churley: Or a contact preference. We tend to manage fairly well, thank you very much. So have I summed up your presentation fairly well?

Ms. Jordan: Absolutely. I just want to be on the record that I do not support this bill with any type of disclosure veto or a \$50,000 fine. I would rather this bill be the best piece of legislation instead of having to come back one day and argue the fact of how discriminatory it is to have a fine and be treated like we're criminals.

The Chair: Mr. Arnott may have a question for you.

Mr. Arnott: I wanted to reiterate one of the things that Ms. Churley mentioned, because a number of the deputants have made reference to this Universal Declaration of Human Rights. I'm in receipt of a copy of it now, and I appreciate your bringing that to our attention the way you did. Thank you.

The Chair: Thanks very much for your presentation.

COALITION FOR OPEN ADOPTION RECORDS

The Chair: We'll move on to the next presenter, the Coalition for Open Adoption Records.

Dr. Michael Grand: Mr. Chairman, I am going to talk about the privacy commissioner's comments; I'm not going to talk about her.

The Chair: May I then—

Dr. Grand: You don't need to warn me. I understand.

The Chair: OK. That's fine. I'll be happy to hear.

Dr. Grand: My name is Dr. Michael Grand. I'm a member of the coordinating committee of the Coalition for Open Adoption Records. COAR is an umbrella organization for every major adoption group in the province interested in open adoption records. You will have heard from many of these groups over the past two days.

I am also a professor of psychology at the University of Guelph and the co-director of the National Adoption Study of Canada. I have conducted the most comprehensive study in the country to describe and assess adoption policy and practice. The results of the study are published in my book *Adoption in Canada*. In the course of the study, I have met with the directors of adoption and their respective staff in every province and territory in the country. This work has been recognized by the Adoption Council of Ontario, the Adoption Council of Canada and the North American Council on Adoptable Children.

Good policy should not be based upon opinions or casual observation, nor should policy be determined by single-case examples. It is impossible to write law that will cover every instance. If this were the standard we used, then we would not allow anyone to drive a car for fear of a single accident. We would not engage in business for fear of a fraudulent transaction. I'm sure you see the ludicrousness of taking the extreme position. Law must be written to do the most good, while at the same time attempting to limit the possibilities of harm.

This is the approach that's been taken in Bill 183. It balances the right of everyone to a history with the right of adult adoptees and birth families to control direct access to each other. The provisions in Bill 183 are based upon the best research findings we have concerning the process of adoption. They are not an emotional wish list; they are premised upon well-gathered data. In this light, I would like to consider some of the issues pertaining to the bill.

First, let me address the question of whether a contact veto will be a strong enough disincentive to protect the privacy rights of those being sought, or will Bill 183 destroy the lives of birth parents who wish to keep their

past a secret? Let us look at the data presented by the privacy commissioner yesterday. She read out a series of emotionally charged letters of birth parents who fear that their lives will be ruined if Bill 183 were to pass in its present form. It's not hard to be moved by the force of these concerns, but let us not be confused by the privacy commissioner's presentation. She spoke of birth parent anticipation of harm but, I would emphasize, not actual harm itself. Not a single letter she offered described the lived experience of someone who had been found and had not wanted contact.

1730

Contact vetoes are available in many jurisdictions. They serve their purpose. No jurisdiction has ever taken steps to remove a contact veto from legislation for the reason that it didn't work. They've always kept them.

We've also been told in press releases and during debate in the Legislature that the experience of New South Wales points us toward the necessity of a disclosure veto, so let's look at the full evidence. In 1992, the New South Wales Law Reform Commission reported that a significant minority of birth parents felt the law violated their privacy, that a significant minority of adoptees disapproved of the law and that a majority of adoptive parents were opposed to the law. This has been cited by some to indicate that the adoption community does not want legislation without a disclosure veto. But what is the rest of the story? What you were not told was that the 1992 report also discussed the unexpectedly high compliance with the contact veto. In 1997, a subsequent law reform commission report never mentioned the need for a disclosure veto, and in 2000, the new adoption act again did not include a disclosure veto.

What is the conclusion to be drawn? Bill 183 is neither new nor is it radical. It has been tested in the field. It has been found to provide the necessary protections.

Are adoptees at risk in heading into a reunion with an abusing birth parent—a scenario that's been put in front of us? In the national adoption study I authored, we asked all children's aid societies in Ontario, as well as over 300 other practitioners and agencies across the country, about search and reunion. Not a single respondent raised the issue of re-abuse as a concern if records were to be opened. I travelled to every province and territory in this country as part of the feedback process. I met with the provincial adoption coordinators, as well as a wide cross-section of professionals in adoption, adoptees, birth parents and adoptive parents. There was not a single instance in which any of these groups voiced concern for this matter.

Yesterday, this committee was asked to add a disclosure veto to Bill 183 for adoptions prior to the passage of the bill. What is the price of doing this? The research indicates that issues of identity and disenfranchised grief are at the heart of many of the difficulties that adoptees and birth kin experience. By restricting access to identifying information through the use of a disclosure veto, you are asking those affected to continue to pay a high personal price, both psychological and medical. We don't

need two classes of adoptees and birth parents: those who will be allowed to come to terms with their history and those who will be restricted from doing so. This is simply cruel. The contact veto has been proven to protect a person's privacy while maintaining access to a history. Please do not include an unnecessary disclosure veto, and ensure the retroactive nature of this bill.

The Coalition for Open Adoption Records is recommending a number of amendments to the bill. We have sent you a copy via e-mail through the clerk of the committee. I hope that you have it. If you don't, we can easily make other copies available for you. In the interests of time, I will limit myself to mentioning only the most important amendments that we think must come forward. I must also say that I've been very impressed with the list of amendments that other speakers have presented today.

The first one that is vital for the act—because you can't take away what you've given and leave adoptees now with just a name but no history—is that we must have access to non-identifying information. Under the current law, adopted adults, birth parents, birth siblings and birth grandparents have the right to obtain descriptive information about relatives lost to adoption. That's under the current law, not this one. This information is taken from the files kept by the adoption disclosure registry. Unfortunately, Bill 183, through subsections 166(4) and (5) of the CFSA, would take away this right. There's no controversy about this. Everybody wants access to non-identifying information, and so that right must be returned. There has been no discussion to say that it shouldn't be so.

Secondly, we need a searching mechanism. You can't simply give a name and then just drop people. Law put people into this position and now the law has to take them out. If the government chooses not to have the ADR, you need to put another mechanism in place to assist people in searching. We go into details of that in our document to you.

We're very concerned by the fact that many birth mothers were told not to put the name of the birth father on the long-form birth registration; they were advised to do that. But adoptees are looking to find that information, and that information oftentimes appears in the file. So if trustworthy information is available in the file about the name of the birth father, it should be made available to them.

Many adoptees are born in this province and then adopted in another province, or born in another province and then adopted in Ontario. As long as you're a citizen of this province, you should have access to documents that this province possesses, either the long-form birth registration or access to the adoption order. One way or another, you should have access to your own documents.

We're very concerned that adult children of adoptees—and it's funny to use this term, adult children of adult adoptees, but that's who I'm talking about—should have the right to also know who their grandparents, their uncles and their aunts are for medical reasons, for

psychological reasons, to fulfill a full sense of identity. The law at this moment is not structured to give that right, and I ask you to ensure that that's put into the law.

We also offer 11 other amendments to you in our document, and I ask you to consider them carefully.

In conclusion, I would once again stress that the decision to open the records is one that finds strong support in the research on adoption. To reject it on emotional grounds is not the way to go about developing strong social policy. The research speaks for itself. Please join with the overwhelming majority of the adoption community and support Bill 183.

The Chair: Thank you, Dr. Grand, for your presentation.

JUDITH LALONDE

The Chair: We'll move on to Judith Lalonde. Please proceed.

Ms. Judith Lalonde: I just want to say, first, that I'm honoured to be here today to speak about Bill 183, the disclosure of information and records to adopted persons and birth parents bill. My name is Judith. I am an adoptee who was born with cerebral palsy. It affects the whole left side of my body. I'm also a mother of three small children, who also are affected by my adoption. They are a huge part of the reason why I wanted to know my heritage, my nationality and my medical history.

I registered with the ADR and performed a search on my own for my natural mother, and it took me nine years before I found her. All that I had to go on was my non-identifying information and the initial of my birth last name. My adopted mom spent many, many hours with me helping me in my search. She did that because she loves me and wants me to know everything possible about my history.

Prior to 1970, adoptees' birth last names were on the adoption order that was given to the adopting parents. Because I was born in 1971, I was not privileged to have that information that adoptees before me were granted.

I am one of the adopted adults whose search did not have a fairy-tale ending. My natural mother told me that she did not want any contact with me. It has been three years since that devastating call. It was very hard to understand, as she did not give any reasons as to why she wanted it like that. I have abided by her wishes for me not to contact her since.

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I am very much in favour of the opening of adoption records but believe that this bill is missing some important components. I believe that Bill 183 should be amended before it is passed to include:

(1) Adopted adults to receive copies of their adoption files held by the children's aid society and the adoption disclosure registry: As in its title, disclosure of information and records, we should have access to all of the information contained in our files and not just legal documents like the original birth certificate or the adoption order. My number one issue is having unlimited

access to my adoption file. Whatever is in that file pertains to me, and therefore I should have access to everything that is written in it. In British Columbia, adopted adults and natural parents are given copies of their adoption files. We in Ontario should have the same privilege. I also understand that Alberta and Newfoundland and Labrador have the same access to their adoption files.

(2) Inclusion of natural fathers in the identifying information given to adopted adults: In most cases, the natural mother was discouraged and even prevented from putting the natural father's name on the registration of live birth, but the name was often put into the file at the children's aid society. As adopted adults, we should be given access to the information.

(3) Access to non-identifying and identifying information for adopted adults, children of adopted adults, natural parents and their extended families—aunts, uncles and siblings: If adopted adults are deceased or provide written consent, their children should be allowed access to this information, and if the natural parents are deceased, their extended family should also have access to this information. My sister, for example, is a third-generation adopted person. She was adopted, her natural mother was adopted and her natural grandmother was also adopted. She should be able to have access to her grandmother's records in order to really find her own origins.

(4) Retroactivity and the no-contact preference: The no-contact order is sufficient. There will be no need to attach a disclosure veto. Adopted adults and natural parents will obey this order not to contact whoever placed the notice. There should be no disclosure veto attached. This bill has to be retroactive in order to give all adopted adults the right to know their own heritage, nationality, medical information and the names of their natural parents.

I believe, from speaking to numerous people in the adoption community, that these are all issues that need to be included in this bill. Many people have stated that Ontario is moving into the 21st century with this bill. Let's do it right the first time so we don't have to go back and make changes. This is a very important and sensitive issue to many Ontario citizens who have fought for many, many years to have adoption records opened.

I am also a member of Parent Finders in Windsor, and we have a database of about 1,200 people comprised of adopted adults and birth parents. We have been lobbying for about 20 years for changes to adoption records. Not one of our birth mother members has expressed concern about confidentiality. As a matter of fact, they feel that they have been discriminated against because the adoption disclosure registry will not search on their behalf, thereby reducing their chances at a reunion. I was appalled to hear that many birth mothers were approached while still in hospital after childbirth with forms to sign away their children.

Adopted adults are not second-class citizens, and therefore we should not be treated so. We have the same

right as any other Ontarian to know where we came from, our heritage, our nationality, our medical history and the names of our parents. This bill is about the adopted adult who never had the chance before to say what we needed or wanted. The time has come to give us what is rightfully ours: our history. Thank you for letting me speak.

The Chair: Thank you for your presentation. We have a minute each per party. Ms. Wynne?

Ms. Wynne: Thank you very much for coming forward. I am completely supportive of your right to have the information that you need and that birth mothers need. My one question is, how would the bill be changed negatively for you if there were the opportunity for adult adoptees—so children, not the birth parents—to put in a no-disclosure veto? It would be asymmetrical; it would be just for the adoptees, not for the birth mothers. This is just a hypothetical question on my part.

Ms. Lalonde: If there was abuse, if the child was taken away, then I totally agree that there should be.

Ms. Wynne: OK. Right now, in the bill, the adult can go before the board and get that exception, can get that disclosure if there's been harm. But what if the adult adoptee just wanted not to have anyone—

Ms. Lalonde: Contact?

Ms. Wynne: —know the information? The no-contact is there, but they didn't want the birth family to have the information. They wanted a no-disclosure veto from their perspective.

Ms. Lalonde: I think that the birth mother and father should be entitled to know that their child is OK. My natural mom told me on the phone that she didn't want contact, and I've abided by her wishes for three years.

Ms. Wynne: So you think there's enough protection for that person in the bill?

Ms. Lalonde: Yes, there is. Right now, there is no fine that I have to be worried about, but I'm still respecting her wishes not to contact her.

Ms. Lalonde: Right. Thanks very much.

Mr. Arnott: Very briefly, Ms. Lalonde, I just want to thank you very much for coming forward today to offer us your advice and your experiences with respect to adoption disclosure. It's very helpful to us.

ADOPTION COUNCIL OF ONTARIO

The Chair: The next presentation is the Adoption Council of Ontario: Mary Allan.

You can start any time.

Ms. Mary Allan: I know you're behind schedule, so I just have a succinct little speech. I'm Mary Allan, chairperson of the Adoption Council of Ontario. I'm also a private adoption practitioner and have spent most of my professional life counselling as an adoption reunion counsellor. Thank you for giving us the opportunity to express our views concerning Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents.

The Adoption Council of Ontario is a non-profit charitable organization that was formed in 1987. Our

membership and board of directors represent all aspects of adoption: birth parents, adoptees, adoptive parents and adoption professionals from across Ontario. Our mission statement is "to educate, support and advocate on behalf of those touched by adoption in Ontario." To this end, we concern ourselves with a broad base of information and resources for those concerned with adoption.

For many years now, the Adoption Council of Ontario has supported the numerous private members' bills that have been introduced to change the laws in Ontario with respect to adoption disclosure. It is therefore with great anticipation and enthusiasm that we support Bill 183. We view these changes as a balanced approach to the complex issues surrounding the disclosure of information to adult adoptees and birth family. They represent a significant step forward toward the elimination of secrecy in adoption that has so long prevailed and continues to prevail in adoption today.

Specifically, we support the fundamental right of the adult adoptee to have access to their original birth certificate. As proposed, this must be retroactive. I'll quote from Ralph Garber 20 years ago, when he said that "changes in disclosure legislation are meant to redress the wrongs or limitations imposed upon birth parents, adoptees and adoptive parents by previous legislation." So it's really got to make a difference.

We support the proposed changes that would give access to identifying information to both parties. The ability to file a no-contact veto, in our view, is a satisfactory vehicle to deter unwanted overtures of contact and has been effective in other jurisdictions in Canada and around the world.

The changes proposed in Bill 183 acknowledge that, although adoption separates an individual from birth family, it need not permanently sever the tie to their biological heritage. You've probably heard lots of this today, but in adulthood, many adoptees feel a deep-seated need to know of their roots, the circumstances of their birth and adoption and, in some cases, to connect with birth family. It's still a minority of people who do. This desire is not viewed as dissatisfaction with one's adoption or disloyalty to one's adoptive parents but as a normal and natural outcome of adoption. As such, obtaining information and contact should not be an onerous process, either.

Bill 183 acknowledges that adoptees and birth family members have a right to information, that they have a choice to determine when, how and if they will initiate contact. Adoptees have told us over and over again that knowing their history and where they fit in the world can make a tremendous difference in their lives, that they feel they have a footing in the world, so to speak. Birth parents need to know that the decision that they made, willingly or unwillingly, many years earlier was a good one, that their child is making their way in the world and that important medical and social information is available.

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So we commend the Ontario government for showing leadership in proposing significant changes to a system that is outdated and at odds with current adoption legislation. The changes proposed in Bill 183 will make a significant and positive change in the lives of those affected by adoption and will become accepted as a normal part of the adoption experience.

Having said that, there are two items in particular I would just like to bring to the attention of the standing committee. The proposed changes to Bill 183 essentially mean the dismantling of the adoption disclosure register, and we strongly recommend that the register continue. It is a concept of choice that is really important and key.

Some adult adoptees and birth family members will wish to choose to connect with each other through the register. For them, this is a choice that they're comfortable with. They also may wish and need assistance with search in order to locate the other party, or wish to have contact made on their behalf. They may have a common birth name—Smith, Jones—that could hinder their success when they're self-searching. Whatever the reason may be, the continuation of the register is an important piece to include in this legislation. As well, the register remains a means by which—this was mentioned before—birth family members not identified on the birth certificate can be connected with: birth fathers, birth siblings and birth grandparents have been able to connect thus far.

Along similar lines, this legislation does not provide for the release of non-identifying information from agency and ministry records. Not only does non-identifying information assist in search, if that's the goal, but for many adult adoptees, the receipt of non-identifying information is the only step they may take in the pursuit of family information. It must continue to be a legislated entitlement for both the adult adoptee and the birth family members, as it has been for the last 18 years.

To conclude, the Adoption Council of Ontario supports Bill 183 and the openness that it will bring to those affected by adoption in Ontario. We encourage the government to carry out a broad public education campaign to inform the public once the proposed legislation is passed, and we look forward to assisting in spreading the good news in whatever way we can.

Mr. Arnott: Thank you very much for your presentation. It was very thorough and gave us your views directly. I don't have any questions.

Ms. Wynne: Mary, thank you very much. I just have a question about whether you think community agencies can do the job of the adoption registry. Can you talk about your concerns about that?

Ms. Allan: When you say "community agencies," what are you thinking of?

Ms. Wynne: That function would go into the community, and agencies would perform the function that's now performed by their registry.

Ms. Allan: I hadn't really thought about that, but I would imagine that something like that could work.

Records and so on are centralized. So it gets cumbersome in terms of records back and forth, but it is something that could—

Ms. Wynne: But you're worried about the function. You want the function to be preserved.

Ms. Allan: I want the function to be there, that's right, whether it's done by the children's aid societies or the ministry.

Ms. Wynne: OK. That's helpful. Thanks, Mary.

The Chair: Thanks very much for your presentation.

BIRTHMOTHERS FOR EACH OTHER

The Chair: Next is Birthmothers for Each Other. There will be 10 minutes for your presentation, madam. You can start any time.

Ms. Chantal Desgranges: Hi. My name is Chantal Desgranges, and I'm one of the co-founders of Birthmothers for Each Other. It's a support group that I started in 1993, when I was about to be reunited with my daughter. My story is not unlike a lot of birth mothers. Many of us were forced to relinquish our children to adoption for various reasons, and this is why I came today to speak in support of Bill 183.

Adoption has affected all of us birth mothers, but also adoptees. I know that my daughter struggles on a daily basis with issues related to adoption. I'm so happy and grateful that I'm in her life to help her through that. She is well-loved by four different families: my side, her birth father's side, and her adoptive parents' sides as well.

I want to talk a little bit about the anonymity. I feel that it's not required. This was imposed upon us when we relinquished our children. In order to make things right, we need to stop perpetuating the secrecy around adoption. That's why I really want to see open adoption records, and it needs to be retroactive. I also think that the record should be kept in place for siblings who wish to be reunited.

After all, if we look at the laws that have changed in our society around gay rights, around slavery, around women's right to vote, I believe that it's now time to have open adoption records. That's all I have to say.

The Chair: Thank you for your presentation. Are there questions from anyone?

Ms. Wynne: I'll just ask the same question that I asked Mary Allan before you. You want the registry to be kept in place. But if those functions could be performed by community agencies, would that be adequate for you? The issue for you is that people be able to contact each other.

Ms. Desgranges: Yes, that's correct.

Ms. Wynne: So whether it's through the registry or a community agency, that's not a critical issue for you?

Ms. Desgranges: As long as it's done in a fair and equitable manner and people are not stonewalled, I'm happy with that.

Ms. Wynne: Thank you.

The Chair: Thank you very much for your presentation.

DIANNE MATHES

The Chair: Next is Dianne Mathes. Please start at any time.

Ms. Dianne Mathes: Good afternoon. Thank you for the opportunity to present to the committee. My name is Dianne Mathes. I'm a psychotherapist here in Toronto, in private practice. I'm also a reunited adult adoptee. I have specialized in the area of adoption work for the past 15 years, both as a result of my personal history in adoption and my professional commitment to adoption. I have worked over these years with several hundred adopted adults, birth parents and, more recently, adoptive families. I've also worked closely with the adoption community as I have become aware of the challenges in life and in counselling for those whose lives are in the world of adoption. Over the past three years I have been presenting a training series on grief and loss issues in adoption for professionals across Canada who work with individuals and families in the world of adoption.

Adoption brings many difficult and evasive issues to the counselling session. I want to be clear in this presentation that in the area of counselling, I'm not describing counselling that addresses pathological issues but rather counselling which provides a place and opportunity for those individuals in adoption to piece together the disparate bits of information about themselves and their histories and the sense of loss, disorientation and disenfranchised grief which they live with and cope with amazingly well. In short, it provides an opportunity for the psychological impacts of closed adoption.

In counselling and therapy we strive to support individuals and families in achieving a sense of positive self-regard and esteem, and those concepts form the foundation for building identity, a strong sense of one's self, which then allows for the creation of healthy and loving relationships with others. Closed adoption has compromised and continues to compromise all of these achievements and makes providing these opportunities within a counselling or therapy setting difficult and next to impossible.

It is for the simple reason that without a factual base of information about anything that relates to genetic background, genetic identity, kinship history or medical information it is impossible to support people in determining who they are or in defining their life story. Unless they are willing to go through years of waiting on registries or searching alone and isolated, many adopted adults struggle with basic uncertainties about their right to exist, a sense of worthlessness and rejection, while having to build their life stories, their identities and ultimately their relationships and families on scattered bits of information which possibly a very ethical professional documented, but it was decades ago and there was not even a standardized format for the collection of that information. This is simply not a dignified way to build a sense of who you are or to try and make sense of your life story or history. It certainly does not allow individuals to learn

the qualities of inner respect, trust and love so essential to every human being and every healthy relationship.

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Nor does it strengthen the bonds or connections or opportunities within adoptive families. As adopted children wander in a sense of disorientation and genetic bewilderment, they can direct, on occasion, their confusion and pain toward their adoptive parents in hurt, anger, confusion and even rage. The disproportional number of adopted children and families who are seen in children's mental health centres, counselling facilities and family service agencies across this province attests to a small taste of the problem. Unfortunately, though, as adopted children and, later, adults become assessed and diagnosed, they can often learn to feel worse about themselves, less worthy and more flawed. As feelings like these take hold, not only do adoptive families feel helpless and the bonds weaken, but individuals who have done nothing wrong other than to be born into adoption are left without the basic rights and opportunities to build themselves into strong individuals. In the over 200 families I have worked with in my 15 years in adoption specialization, I have yet to work with or meet an adoptive family which made contact with birth or original parents and received information which ever regretted that decision or did not come to see the strength for both their families and their adopted children.

As teens and adults connect with information and kinship connections, they are often continually amazed that as they grow in esteem and confidence in their sense of identity and who they are, their connections with everyone in their lives improves and strengthens. They are able to answer their own questions, integrate a sense of themselves from all of their familial connections, and, when this is able to occur in a way that respects and dignifies both adoptive and original birth families' rights in an open, honest approach, it creates a sense of control and empowerment over life and family which has often been removed through closed adoption. When one is asked to wait on lists, hear information third-party, the problems that surround adoption are played and replayed over and over again in individuals and in families. My experience has only been that people are incredibly respectful and careful as they approach obtaining information or making contact. They well know the difficulties that adoption has created.

Closed adoption compromises birth and original parents as they are unable to provide to their children the natural and essential information about their history, and they are unable to know how their children's lives are going and to share with them the connection. This is not about birth or original parents or families taking over legal or parenting roles; it is about recognizing that a child's, and ultimately an adult's, development, personality and life comes from two families in adoption, and that to keep secret and closed the information and access to one is to ask children, adults and families to build lives and connections on fantasies and secrets. When adoptive families fear reconnections with birth relatives by their

adopted children, it is usually because those very secrets and fantasies have kept the bonds tenuous. When adoptive parents and families are able to embrace the fullness of their adult child's life and needs, the connections do not weaken, but grow not from fear and dependency but from mutual love and respect.

The very essence of closed adoption with its secrets and lack of access is also asking professionals and peer counsellors to do the impossible: to support and assist adults in being healthy and productive without any of the basic access to the information about who they are, where they come from and their medical and kinship history.

How can we expect strong, healthy citizens and families if we deny the basic rights that every person has? To me, it says a lot about the strength and creativity of the millions of adopted adults and birth and original families that they coped and managed as well as they do. That is, however, not to say that it's fair or right, and it's not acceptable that these basic rights to information and the resulting benefits have to be such hard work. These are not issues of privacy; these are issues of self-respect and dignity that every human being has a right to and that, without, create a lifetime of confusion, questions and difficulties that no one should have to live with.

It is time and I believe that most of the aspects of Bill 183 return the dignity and respect that has been afforded to every other adult. I would ask you to consider whether the dismantling of the ADR is a correct approach.

I would just like to add, although it's not in my written presentation, if there is consideration being given to turning some of those services over to community agencies, that you bear in mind that some of the issues in adoption, if you're thinking about post-adoption services and supports, are fairly specialized. You can look to the Boston program under Joyce Maguire Pavao as an example of ways that families can have access to both the functions and the supports they may need while having the choice and opportunity about how to bring that into their lives.

I thank you and wish for your support on Bill 183.

The Chair: Thank you for your presentation.

CANADIAN COUNCIL OF NATURAL MOTHERS

The Chair: There is another presentation, from the Canadian Council of Natural Mothers. That will be the last presentation.

As the lady takes a seat, I remind all of you, if you're interested in watching what took place here today, you can watch the Queen's Park channel at 2:45 p.m. tomorrow and see what we said.

Please begin.

Ms. Karen Lynn: Good evening. I'm Karen Lynn. I'm president of the Canadian Council of Natural Mothers. We are a national organization of mothers who lost their children to adoption from the late 1950s to the present. Most of our members are in Ontario.

I'd like to quote a different privacy commissioner, not Dr. Cavoukian.

When former Privacy Commissioner of Canada George Radwanski was asked to define privacy, he said, "I would define 'privacy' as the right to control access to one's person and to information about oneself." Open adoption records is about giving people back information about themselves. This is all we want.

Thousands of mothers like myself want and deserve retroactivity in accessing identifying and non-identifying information about our lost children. A disclosure veto in Bill 183 would be unacceptable to us. We did not abuse our children. Many of us were not even allowed to see our babies.

My story is typical. My son was born on November 7, 1963, in Toronto General Hospital. After, his father and our parents failed to support me in keeping my son. I was 19, had been attending Victoria College just a few blocks from here, secreted away in a maternity home in Clarkson lest the shame of an unmarried pregnancy sully the family name. I gave birth entirely in the company of strangers. When I asked to see my baby, the nurses told me I was not allowed to see him. A note was put on his bassinet saying, "Mother does not want to see baby." This was one of the many lies constructed by the elders who conspired to separate me from my child permanently. Fortunately, he's here today.

I asked to breastfeed my son, but against my will I was injected with a drug to prevent lactation, likely DES, which was later shown to cause cancer. I knew I was the legal mother of my son. I insisted, through tears and the bluff of a penniless teenager, that I would not surrender my son and that my son be brought to me. They did and I spent about one half-hour with him before we were again parted for what turned out to be 35 years.

My treatment as an unmarried mother caused unrelenting, unresolved trauma and grief that was to endure for many, many years because of the loss of my first-born and the failures of my family and society, sanctioned by the laws of Ontario. I now find it unconscionable that some persist in the mythology that I was promised confidentiality. I provided you with copies of the consent to adoption that I signed. It does not mention my privacy. It does not offer anything to mothers. No one offered it to me, even verbally. Many other mothers had their babies removed by court orders despite the fact that they had not abused their babies.

However, my son's adoption order, like all those before 1970, had my surname on it. This name was unusual. Anyone could have found me. How does this fact support the notion that mothers were offered confidentiality? Is a surname not identifying information?

It's completely twisted to assume I either asked for or wanted my privacy protected. My reality is that confidentiality was an imposed punishment for the crime—which is not a crime—of being unmarried and pregnant.

After 14 years on the passive registry, I found my son, who was very happy to be found. We now have a very close, loving and enduring relationship. Only then did I

begin to heal. Last year, however, he was diagnosed with cancer. Knowing his familial medical history has been an invaluable necessity.

1810

When I met my son in 1999, his first question to me, as we sat in my kitchen poring over family photos, was, "What happened?" The question is so profound that it still sticks in my throat.

Thousands of mothers in Ontario are punished by false allegations of promised confidentiality and suggestions that we get on with our lives. The opposite is true. The damage can only begin to be corrected by being able to resolve the trauma. We were the young, shamed, powerless, unsupported mothers who suffered the moral authority of prevailing social values. In 1927, when the laws began to be sealed, no one consulted us. It has not been until recently, when we raised our voices against these more than 75 years of abuse, that anyone has bothered to find out what really happened to us.

After World War II, there was a demand for healthy white babies, and we became the suppliers for the growing industry. We were labelled as wanton, unfit mothers. The emerging social sciences called us "neurotic and psychically weak"; we needed to be rescued from ourselves. Entire conferences were convened to discuss us, but we were never invited.

What about the silent mothers who are not here? Bill 183 will go a very long way to change social attitudes, to remove the shame and fear and trauma that frames their lives by making it clear that they were not inferior, unfit or neurotic. This is how we undo unwarranted shame and fear.

It may be that someone, without authority, offered this privacy, but please look at the facts: Not one of our members has come forward saying that she asked for, wanted or was offered confidentiality. Secrecy in adoption is cruel and pathological. It has created fear in some people. It has to end. We recognize that a tiny minority fears open adoption records, but personal pathology should not be elevated to public policy.

After consulting with our membership, the Canadian Council of Natural Mothers, in the best interests of ourselves and our children, recommends that Bill 183 be made retroactive and contain no disclosure veto; include access to identifying and non-identifying information for us, our adult children, birth siblings and the adult children of adopted people; retain the option of an immediate search based on urgent health issues—witness my son's disease. These provisions would allow us to begin the healing from the trauma of separation by adoption.

I thank Marilyn Churley for her years of sustained dedication to this cause and Sandra Papatello and Premier McGuinty for their considerable efforts in bringing this bill forward.

Finally, there are no documented reports or cases of suicide as a result of open records anywhere, but there

are suicides as a result of sealed records. There will be a lot more devastation if this bill does not go through.

Some quotations from natural mothers, who, incidentally, are not anonymous:

"I am diabetic. I am not well and will probably die before I find my lost son.... I am an old lady now, time is passing! I cannot do any more to find my son, is there not going to be any hope for me?"

"My son was born in November 1964. In December ... I was in the psychiatric unit for depression. I have been treated for depression several times since 1964; in counselling for decades. The only relief from the depression and suicidal thoughts was my reunion. Prior to reunion, I would think often, 'Am I going to die before I meet my son again?'"

The next one: "I tried to commit suicide before I had given Dean up because I knew I would not be able to keep him. In my mind, if I was not here then someone in my family would look after him and he would not be without a family. I took a full bottle of sleeping pills. The fire department broke down my door and the ambulance came and took me to the hospital.... You see, I couldn't bear the thoughts of living without my son so I thought if I died before I lost him to adoption I wouldn't miss him. It made all the sense in the world to me at the time."

The last one: "In the summer of 1960, at 14 years old, I attempted suicide and then again in 1978 when my last son was born and I had my tubes tied. The first time was aspirin; the second time it was car exhaust."

Adopted people, like all of us, are at risk of inheriting up to 3,000 diseases. Bill 183 will allow them to find out about these diseases. Because of secret adoptions, adopted people die because they are at risk of inheriting many diseases, such as: cancer, heart disease, Huntington's chorea, hemophilia etc. Bill 183 gives them the chance to find out their family medical histories and, hopefully, avert disasters in their own lives. This way, they can work early on with their family doctors to either avoid or manage diseases or to avoid having children of their own and passing on deadly genes.

Thank you very much for listening to me.

The Chair: Thank you very much for your presentation. You took the 10 minutes.

We thank all of you for making your presentations.

In case you're interested, we are planning to bring this matter for clause-by-clause consideration a week Monday, on May 30, at 3:30. I don't know the actual room.

Again, if you wish to see what took place today, tomorrow you can watch the channel at 2:45.

Mr. Arnott: I want to express appreciation to our clerk, Anne Stokes, for the extraordinary work that she has done to pull this all together in a matter of hours.

The Chair: Mr. Arnott did what I was going to do.

I thank all of you again. Enjoy the evening, and we'll see you on the 30th if you do come.

The committee adjourned at 1817.

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**Standing committee on
social policy**

Adoption Information
Disclosure Act, 2005

**Comité permanent de
la politique sociale**

Loi de 2005 sur la divulgation de
renseignements sur les adoptions



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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 30 May 2005

Lundi 30 mai 2005

*The committee met at 1558 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): Good afternoon again, and welcome. We are discussing Bill 183 and we are going to deal with clause-by-clause.

Mr. Cameron Jackson (Burlington): On a point of order, Mr. Chairman: We have been rather concerned and confused by some of the developments of the last couple of hours. I found out about the amendments by reading this morning's newspaper and did not receive copies of the government's amendments; I think they're about 30-some pages—39 pages. We received those at 1:30 in the House, so we've not had time to do question period and read these amendments. I just wondered, Mr. Chairman, if in your opinion they're in order, given the fact that the subcommittee report clearly indicates that these amendments should have been put in the hands of all parties in a somewhat more timely fashion. Clearly, the NDP and the Conservatives were able to assemble their amendments and get them in.

I'm concerned, first of all, that the terms that we've been told we had to adhere to under the subcommittee report are being violated, but perhaps more importantly than that, even with a degree of flexibility, we've not had a chance to have a look at these. We read in the newspaper that the minister had two reactions: one reaction to Commissioner Cavoukian's comments, and the second reaction was to some of the issues that I first raised in the Legislature about cultural prejudices that can occur even among some cultural groups in Ontario today. I'm pleased to see that the minister has acknowledged that in her comments. So there's that issue.

The second issue is that these amendments are of a highly technical nature and we'd like to know if staff are here from the ministry to explain them to us, because we've not had time to seek any kind of an understanding

of their legal intent, and neither have Ms. Cavoukian and her staff, who have expressed a sincere interest.

Another complicating factor is that, to my knowledge, we don't have Hansard as of yet for each of the days that we've had the public hearings. I could be corrected on that.

Interjection: We do have them.

Mr. Jackson: We do have Hansard? OK, fine. Because I knew they were backed up, but we do have them; that's good.

Mr. Chairman, I'd like to know what your ruling is in this situation. There were attempts earlier to try to begin this process in earnest tomorrow so that we do have sufficient time. As someone who has gone on the public record as wanting to see this legislation go through, I need tomorrow, which is the day I speak to my caucus, and when I speak to my caucus I want to be able to explain to them these amendments. So I'm really looking for a ruling, and maybe other members would wish to comment. This is rather highly unusual, to receive this many amendments an hour and a half before we're required to vote on them. In my 20 years, I've not experienced it.

The Chair: Mr. Jackson, you raised three questions. The third question has already been answered, and that is that we do have the Hansards.

On the second question: In regard to staff, I know there is some staff. Is anybody from the Attorney General—yes, Mr. Parsons?

Mr. Ernie Parsons (Prince Edward-Hastings): Yes, Chair, we have two people with us to provide technical advice: Susan Yack, counsel from the legal services branch, and Marla Krakower, manager of the adoptions disclosure project.

The Chair: Thank you.

On the first question, it's my understanding that notice of amendments must be given within two hours, and that has been met, so the time that needs to be given was given properly. I appreciate your comments on the amount and importance—you may want additional time—but they have met the requirements of the law and therefore I don't have any difficulty ruling that we can proceed with the meeting. I think there is significant interest in the community to deal with this matter as soon as possible, and I believe we can, but I will be happy to hear from you, Mr. Sterling, and anybody else.

Mr. Norman W. Sterling (Lanark–Carleton): The general rule is you have to file amendments two hours before, and that's generally intended in terms of something that arises during what you're doing and you amend the legislation at that point in time. But the committee did adopt the decisions of the subcommittee report, and the subcommittee report says in point 9 that amendments to Bill 183 should be received by the clerk of the committee by 5 p.m. on Thursday, May 26, 2005. These amendments were not received by the committee clerk. So I would say that that would supersede the general rule that we have about the two-hour limit.

The whole purpose, I think, of the subcommittee report was to try to set down a time frame so that we could come to this meeting and vote with some intelligence and debate with some intelligence as to what was being proposed. I would like to have the ministry people come forward and go through their amendments and explain what the new regime that is put forward by the amendments is all about before we get into the clause-by-clause.

The Chair: I hear what you're saying. I'm going to allow Ms. Wynne to give me her reasoning on the timing and so on and then, if I have to change my ruling, I'll be happy to do that. But let's do that and then I will try to answer the last question that you asked about the ministry.

Ms. Kathleen O. Wynne (Don Valley West): Thank you, Mr. Chair. Two points: The subcommittee report said that the amendments should be received by that time, not that they must be. So it's absolutely within the scope of the subcommittee report that we would get these amendments today. Secondly, on the issue of the staff coming forward, my understanding from other committee processes is that as we go through clause-by-clause it's absolutely possible for staff to bring clarifications, and they're in the room. It's my suggestion that we could get going on the clause-by-clause and staff could help us as we go along, if that's necessary.

The Chair: That's what I was going to recommend. That's what we have done in the past, that as we have some technical questions, staff is here for that purpose, to assist all of us with any questions we have. I would suggest we proceed as intended, but I do note your comments. Do you still have some questions, Mr. Sterling?

Mr. Sterling: Yes, I do, Mr. Chair. As I understand it, this is a whole new regime that's being inserted in the bill after second reading. The government or a member doesn't have the right to insert whatever they want in a bill. It has to be included in the bill and you can amend it from there, because the Legislature has already voted on the package and now we are essentially considering that package plus a new package. The legislative process is such that, after second reading, you have to view these amendments as to whether they were considered in the original legislation that was debated in the House. This is why I wanted an explanation from the ministry and

legislative counsel as to how they fit within the original framework of the legislation.

The Chair: Mr. Parsons, staff from your ministry may want to answer that question. Again, I believe we can proceed with the meeting. If you need additional—

Mr. Sterling: You have to rule on whether or not these amendments fall within the ambit of the bill that was debated on second reading.

The Chair: The clerk is informing me that I can do that as the motions are introduced, which is what we normally do. If that is the case and if you raise a question on that specific motion, then I'll be happy to rule at that time. I'm told that is the way it's done and that's the way I intend to proceed, if there is no disagreement. Can we do that, please?

Ms. Marilyn Churley (Toronto–Danforth): Yes, it's in order.

The Chair: Thank you. We already did the introduction and I guess the first item would be to the third party, motion 1. Would you like to introduce it, please?

Ms. Churley: I move that the definition of “birth parent” in section 1 of the Vital Statistics Act, as set out in section 1 of the bill, be amended by adding at the end “or the person who is identified in a registered adoption order, or in the court file relating to the adoption order, as the biological father of the adopted person.”

The Chair: Any comments?

Ms. Churley: Yes. Just briefly, this amendment—we've heard a lot about this in the deputations—recognizes the birth father. We know there have been historic problems with identifying the birth father because the name doesn't appear on the original registration, because often social workers followed the accepted practice of the day and actively discouraged us birth mothers, or simply did not allow unmarried mothers to name the father on the birth registration, so they aren't named. Adoptees and birth fathers should not be penalized because of past practices.

Many of the deputants told us that the birth fathers want to be recognized, and also a lot of adoptees need that information, particularly for health and other reasons. In many cases, while not listed on the birth certificate, the father is identified as acknowledging paternity in the adoption file itself. If the birth name is not named on the original birth registration but is named in the adoption files based upon credible and trustworthy information, then it shall be considered as if he were named in the original registration. So this amendment is to remedy the problem we heard about from some of the deputants who are here today.

The Chair: Any debate?

Mr. Parsons: I have no quarrel with the motion other than that we believe it is too restrictive. Given the new, modern technologies it is our belief it would be better covered by our amendment, which provides for regulations to, from time to time, change the definition of “birth parent” as society evolves. I certainly will not be supporting the amendment, because I feel it needs to be even more open.

1610

The Chair: Any other comments or debate?

Mr. Sterling: What does this mean in terms of access to the records? Does it mean the birth father has access to the records?

Mr. Parsons: The birth father would have access to the birth records, yes.

Mr. Sterling: And how would he prove that he was the birth father?

Mr. Parsons: If you're asking me to defend this amendment, I would suggest that it would be better explained by—

Ms. Churley: I can explain, and I did a little bit in my overview. Quite frequently, the birth fathers are named within what we refer to—which, Mr. Sterling, you're aware of—as the non-identifying information, but not named in the original birth registration. So you have a strange situation: The birth father is frequently named within the file at CAS but not on the actual birth registration. This would remedy that situation where there's information in one file but not in the other.

I understand that the Liberals' next amendment deals with that, but without specifically referring to the actual birth or biological father. It's more general in the definition of a birth parent, whereas I'm much more specific about it. It's to aid birth fathers and adoptees in getting information.

The Chair: Any other comments? If there are no other comments, I will now put the question.

Mr. Jackson: Recorded vote.

The Chair: Shall the motion carry?

Ayes

Churley, Jackson.

Nays

Brownell, Leal, Parsons, Ramal, Wynne.

The Chair: The motion fails to carry.

The next one is page 2, the government.

Mr. Parsons: I move that the definition of "birth parent" in section 1 of the Vital Statistics Act, as set out in section 1 of the bill, be amended by adding at the end "and such other persons as may be prescribed."

I think I've commented on this. This basically opens it up so that by regulation—there are still, as we evolve as a society, some questions that need to be answered as to who is the birth father or birth mother. This would allow, from time to time, changes to reflect what that definition is at that point in time.

Ms. Churley: I'm not going to belabour this, so to speak, but what do you mean that over time the definitions of "birth parent" change? The birth father and birth mother are the biological parents; how can it change?

Mr. Jackson: Mr. Parsons referred to new technologies. I'm just trying to understand the real purpose of this. We have public hearings to hear from the com-

munity about where there are gaps in the legislation; we never heard about this. Perhaps we could ask the legal counsel to come forward and explain this, because I'm at a loss to understand what you're trying to achieve here. The legislation speaks to birth parents by gender because of aspects of—if perhaps counsel can explain it to us.

The Chair: Mr. Parsons, can you get somebody from staff?

Mr. Parsons: Yes. I think there are a number of examples, but I can think of a gay couple who are two women, where artificial insemination is involved. Should one of them have the status of father? I don't think that question has been answered under law at this point in time. It may need to be at some time. When that question is resolved, we believe that there needs to be the flexibility to reflect that decision. In the case where you have artificial insemination, I don't think there are answers as to who technically should be termed the father.

Mr. Jackson: There's an extensive ethical paper on the subject that Maureen McTeer worked on for a couple of years which answers that question. But at this point in time, I'd like legal counsel—because you have the power to create regulations. Ms. Churley's amendment was very clear and very specific, and responds to a whole group of individuals out there in society who would like to be acknowledged.

Mr. Parsons: It may be a very good paper, but I would suggest a good paper does not establish legal definitions.

The Chair: A question was asked of staff, and I would appreciate it if staff answered. First of all, identify yourself, please.

Ms. Susan Yack: My name is Susan Yack. I'm counsel with the Ministry of Community and Social Services.

The Chair: Would you be able to answer Mr. Jackson's question?

Ms. Yack: The amendment just gives the flexibility to prescribe a further definition by regulation. It could address a number of situations where currently "birth parent" is defined and a father meets the definition of "birth parent" in certain circumstances. It could be further defined by regulation. It could address new reproductive technologies. It leaves the definition open to further definition by regulation.

Mr. Jackson: So it could include artificial insemination by a sperm donor.

Ms. Yack: It could, depending on what the regulation drafted.

Mr. Jackson: I'm not sure I've been able to put my mind around that. Perhaps the government members have. In the meantime, there's no guarantee we'll get regs to cover off the biological father where the matter isn't in dispute from a technical point of view.

Ms. Yack: No, but those biological fathers who meet the definition of "parent" would currently be covered.

Mr. Jackson: Where does that occur in the bill?

Ms. Yack: It's a birth parent whose name appears on the original registration, so it would depend if his—

Ms. Churley: They're not included.

Mr. Jackson: So they're not included, according to Ms. Churley.

The Chair: Mr. Jackson, you've got your answer.

Mr. Jackson: Are there any other examples that I'm missing besides artificial insemination or sperm donors and gay couples? Are there any other examples that you've been—

Mr. Parsons: I would think one example would work.

The Chair: The question was, are there any others? There is no answer to your question, Mr. Jackson, unless staff—would you mind staying there, please? Any other comments?

Mr. Sterling: I think we'd like the opportunity to draft an amendment to this amendment. Therefore, I would ask that this one be stood down until we have that opportunity. I think there should be some limitations on how far this regulation power can go.

The Chair: The question has been made. Is there consent to stand down this amendment?

Ms. Wynne: Can I just be clear, Mr. Chair? The request is to stand down the amendment until what time?

Mr. Sterling: Until we're finished with the rest of the bill.

Ms. Wynne: So come back to it at the end. Fine.

The Chair: Is there agreement with that? OK. So we'll stand down section 1 until we deal with that amendment.

Next is section 2, page 3.

Mr. Parsons: Chair, I would like to ask that sections 2 and 6 of the bill be stood down until we have dealt with section 8 of the bill.

The Chair: Do we have agreement on that?

Mr. Parsons: I certainly will stand down the government motions relating to sections 2 and 6, but I would ask if the other parties would do the same for their amendments to those two sections.

The Chair: Is there agreement to stand this down?

Mr. Sterling: Sorry, what are you asking, Ernie?

Mr. Parsons: I'm asking if you would consider standing down sections 2 and 6 until we have dealt with section 8. Once we've dealt with section 8, we'll return to sections 2 and 6.

Mr. Sterling: What is section 8? What is your amendment on it? Sorry, we just haven't had a chance to read your amendments.

Mr. Parsons: If you move to—

Mr. Sterling: What page is it on? Page 21?

Mr. Parsons: Yes.

1620

Ms. Churley: I'm afraid we're getting really hung up on this particular section. Although there are some concerns about it, if we start standing down those sections—in some ways they have some pretty important meat of some of the disputes around this bill, around disclosure vetoes and things—I'm just afraid we're going to get all messed up in certain other sections because we haven't

yet dealt with these particular pieces around the disclosure veto or the new amendments that the Liberals are making. So could we have some clarification on how we can move forward in such a way that we don't end up—

Interjection.

The Chair: Sorry. Ms. Churley, you still have the floor.

From what I understand, Ms. Churley, I'm told we should stand it down because we have stood down section 1. I'm told that's the wise thing to do. No?

Interjection.

The Chair: We should stand down section 2 until we deal with section 8, because we should deal with section 8 before we deal with section 2. That's what I'm advised.

Ms. Churley: How long are we going to stand this thing down for?

The Chair: Until we deal with section 8. Can we have agreement with that, please?

Ms. Wynne: Is this just section 2, or sections 2 and 6?

Mr. Parsons: Sections 2 and 6.

The Chair: That's what you asked.

Mr. Parsons: If the section 8 amendment does not pass, then sections 2 and 6 will have been wasted time.

The Chair: So basically we are standing down sections 2 and 6 until we deal with section 8.

Mr. Parsons: Right.

The Chair: Again, do I have agreement on that? Yes.

Therefore, we move to the next one. We can deal with section 3 now. There is no amendment, so shall section 3 carry? Those in favour? Those against? Section 3 carries.

Section 4 has no amendment. Shall section 4 carry? All in favour?

Mr. Sterling: No, just a minute. What's section 29 of the act? We're repealing it. What is it?

Ms. Wynne: Mr. Chair, I'm just wondering if we could get staff to clarify section 29 for Mr. Sterling.

The Chair: Yes, I'll be happy to. Staff have been asked to stay there until the meeting is over, so you can assist us whenever we need you. Would you please answer the question, if you can?

Ms. Yack: I'll read section 29 of the Vital Statistics Act. It provides for—

The Chair: I think it's wise to wait until Mr. Sterling has your attention; that way, we don't have to go over it again. Can we proceed, Mr. Sterling? Would you please answer the question for Mr. Sterling.

Mr. Sterling: I've had it explained.

The Chair: OK. Then we can deal with section 4. Shall section 4 carry? Those in favour? Those against? Section 4 carries.

Section 5 is the same situation. Shall section 5 carry? Those in favour? Those opposed? Carried.

Section 6 was stood down, so we go to the new section 6.1, page 18. Who is moving that? Is the government moving it?

Mr. Parsons: It was my hope, my intention, that section 6.1 be interpreted as part of section 6.

Interjection.

Mr. Parsons: It is not. Lawyers always make trouble for me.

The Chair: It's a new section. There are two sections, Mr. Parsons.

Mr. Parsons: I just remembered what I was thinking.

The Chair: OK. Mr. Parsons, you have the floor.

Mr. Parsons: I move that the bill be amended by adding the following section after section 6:

“6.1 The act is amended by adding the following section:

““Notice, preferred manner of contact

““Adopted person

““48.2.2(1) Upon application, an adopted person who is at least 18 years old may register a notice specifying his or her preferences concerning the manner in which a birth parent may contact him or her.

““Birth parent

““(2) Upon application, a birth parent may register a notice specifying his or her preferences concerning the manner in which an adopted person may contact him or her.

““When notice is in effect

““(3) A notice is registered and in effect when the registrar general has matched it with the original registration, if any, of the adopted person's birth or, if there is no original registration, when the registrar general has matched it with the registered adoption order.

““Exception

““(4) Despite subsection (3), a notice registered by an adopted person with respect to a birth parent does not come into effect if, before the match is made, the registrar general has already given that birth parent the information described in subsection 48.2(1).

““Same

““(5) Despite subsection (3), a notice registered by a birth parent does not come into effect if, before the match is made, the registrar general has already given the adopted person the uncertified copies of registered documents described in subsection 48.1(1).

““Withdrawal of notice

““(6) Upon application, the adopted person or birth parent, as the case may be, may withdraw the notice.

““Same

““(7) If a notice is withdrawn, it ceases to be in effect when the registrar general has matched the application for withdrawal with the notice itself.

““Administration

““(8) Subsections 2(2) to (4) do not apply to notices registered under this section.””

The Chair: Mr. Parsons, are there any comments that you want to make before I recognize the floor?

Mr. Parsons: This is intended to be an addition to the no-contact, not a replacement for the no-contact. It is to provide so that an individual can specify, while I would ask that you note that there are no consequences if a person asks for it to be filed one way and it is, in fact, filed a different way. It is hoped that it will be able to accommodate people's preferences.

Mr. Sterling: I don't know how you deal with this one without dealing with section 6 of their government motion. We're amending two sections that are tied together. You've asked to put one off, and you haven't asked to put the companion one off. It makes no sense to vote on this or to consider it.

The other one is; is this one in order, Mr. Chair?

The Chair: In my opinion, it is in order; on the second question, I can answer. Can staff assist us on Mr. Sterling's comments—on the first part, that is?

Ms. Yack: Well, I understood that section 6 was stood down because it refers to matters in section 8 which deal with orders under subsection 48.4 and so on, whereas section 6.1 does not.

Ms. Churley: Look, I didn't vote one way or the other. I think what we're trying to do here is nuts. We're all confused and wondering where we are and how what relates to what. I think we should go back, even if it means taking a five-minute break, and deal with that one we set aside. We know the implications of it. It's not as strong as mine, but it's trying to deal with it. I'd suggest that we deal with it, vote on it one way or the other and move on, or we're going to spend the rest of the afternoon going back and forth on this and not getting—if we follow these in order, they make sense as we progress. Doing it this way, everybody is confused.

The Chair: Ms. Yack, can I ask your opinion? The question I understood was that we couldn't deal with this section until we dealt with the prior section. The question here is, is that correct? Can we deal with the section now or not?

Mr. Jackson: That's what legislative counsel is here to assist us with, and I'd be taking direction from legislative counsel, who is here to assist the committee.

The Chair: That's fine. As long as we get a professional opinion, Mr. Jackson, I'm happy, so that maybe we can accept the opinion. Would staff give an opinion on that, please?

1630

Ms. Laura Hopkins: I'm happy to. Section 6 of the bill is the section that creates the authority and the duty to disclose information to adopted persons and to birth parents. There are certain exceptions that are created, and there's a proposal in section 8 of the bill to create an order preventing disclosure in certain circumstances. There are also some motions dealing with section 8 proposing further restrictions on disclosure.

The reason the suggestion is made to stand down section 6 is to allow the committee to deal with the exceptions, and having made decisions about exceptions, to then deal with the provisions that create the duty to disclose, because the duty to disclose will be subject to those exceptions. If you deal with the duty to disclose first, then the discussion about the exceptions may be out of order. So although I appreciate that it's confusing for members of the committee—

The Chair: So it's OK and it's in order? That's what you're saying? Can we then move on with this item? Is

there any further debate on this amendment? If there is no further debate—

Mr. Sterling: Yes, there is. I'd like to ask some questions.

The Chair: Yes, of course.

Mr. Sterling: Is this the no-contact section?

The Chair: Staff, can you answer?

Ms. Hopkins: This provision doesn't deal with no-contact. What this provision deals with is the manner in which contact is made. It would create not a restriction on contact, but it would allow a person to express a preference about how they would like to be contacted.

Ms. Churley: It's benign; it's good.

Mr. Sterling: OK.

The Chair: Any other debate? If there is no other debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Section 7, page 19: Ms. Churley, it's your motion, please.

Ms. Churley: I move that subsection 48.3(4) of the Vital Statistics Act, as set out in section 7 of the bill, be struck out and the following substituted:

"Additional information

"(4) The notice may include a brief statement of the person's reasons for not wishing to be contacted and shall include a written statement that summarizes any information he or she may have about,

"(a) any genetic conditions that the person has, and any past and present serious illnesses;

"(b) any genetic conditions and past and present serious illnesses of the person's parents and of,

"(i) the other birth parent and his or her parents, or

"(ii) the other biological parent, if only one person's name appears on the original birth registration as parent, and his or her parents;

"(c) the cause of death and age at death of any of the persons described in clause (b) who are deceased;

"(d) any other health-related matters that may be relevant."

If I may just comment on the amendment, I know that the existing bill encourages but doesn't make it mandatory that people provide this information. Certainly, in my previous bills, it was mandatory. The reason why is—we've raised this frequently—that there are now more than 300,000 Ontarians at risk because of the over 2,500 inheritable diseases that we now know about. Dr. Philip Wyatt, chief of genetics at the North York General Hospital—Mr. Jackson, you'll remember—came and spoke to us in the last Legislature about how absolutely critical it is, because we now know there are so many genetic diseases that are passed on. In fact, the previous government brought in special screening, which I applauded, for breast cancer and, I believe, ovarian, although I'm not sure, and other kinds of illnesses. If it runs in the family, there are special screening opportunities for those people, while adoptees don't get that opportunity, and that's just one example.

We've had another example before this committee on one of my bills where a woman came forward, Kariann Ford, who had inherited a very serious kidney disease that she didn't know about. She passed it on to her children. She sued and—a long story. But these are just a couple of examples of very, very serious situations that we know about. It really comes down to life-and-death situations, so I believe very strongly that that kind of information should be mandatory if people, for whatever reasons, don't want the contact.

Mr. Jackson: I have spoken to this issue in the House on several occasions, and I fully support it. This is the kind of motion that saves lives, so it's very clearly an opportunity to make this bill better.

Mr. Parsons: I think the intent of this is admirable; however, I cannot support it because at the present time, under law, a non-adopted individual is not entitled to health information of their birth parent. There's no requirement that the birth parent provide it to them. If this amendment would require—because it says "shall"—that it be provided to the adoptee, there's no way to enforce this. This is pretty hollow in the sense that there's no mechanism that can make this happen, in fact. So there's no use creating the impression that they're entitled to it when there's no mechanism to make it happen.

Mr. Jackson: Is that the legal opinion shared by the ministry? I'd like to put them on the record.

Ms. Yack: I don't know that I can give legal opinions here. I think my role is to provide information about the bill and about the statute as it is.

The Chair: Thank you. Any further debate? If there is none, I will now—

Mr. Jackson: We also have someone here who's responsible for the administration of the current act. Can she confirm that this is a request that is not uncommon for families who are trying to make the matches?

Ms. Marla Krakower: A request for medical information?

Mr. Jackson: Well, let's put "mandatory" aside. It's the nature of the information that I think is vital. We can argue whether it's mandatory, but in Mr. Parsons's world, it wouldn't appear anywhere on the form. In Ms. Churley's world, it should appear on the form. Whether you get them to sign it is another story, but at least it's there to assist the person.

The Chair: Will you introduce yourself for the record, please.

Ms. Krakower: Marla Krakower. I'm the manager of the adoptions disclosure project.

I think the intent is that the information would be requested, but it wouldn't be mandatory.

Mr. Jackson: So is that the problem, then? I'm hearing from Mr. Parsons that we don't even have a legal right to ask it.

Ms. Krakower: I can't speak to the legal right, but—

Ms. Yack: Under the bill, someone filing a no-contact notice would be asked to provide medical information. It wouldn't be mandatory, but they would be asked to provide it, and could provide it.

Ms. Churley: I would simply like to say again—I don't want to get hung up on this too long—that I would like it to be mandatory. Under the existing act right now, as you may well be aware, in order for people to get health information they have to be diagnosed with a disease, and frequently by then it's too late, if it's a serious disease, to do anything about it.

Of course, if somebody chooses under the new act to put in a contact veto, that is their right, but I don't believe that it should follow that it is their right, frankly, if they make that choice, to prevent their biological child, the adopted child, from getting health information that could literally save their life or help them make decisions about their having children or about preventive remedies for their children or whatever.

1640

I simply put this forward because it's such a huge issue now that I would have liked to see it strengthened. But I understand if the government doesn't want to proceed with that. I'm disappointed. Hopefully, we can make sure the form and the education that's done around it will make it as easy as possible; that people will be encouraged in every single way in terms of education and the way the form is written under the regulations and that sort of thing; that they understand the implications if they don't provide that information; and that because of the information we have today about the genetic revolution, it be strengthened to the extent possible.

Mr. Parsons: I don't believe I said that no one has a right to ask the question. Indeed, I believe it should be asked. I suspect that the vast majority of birth parents would willingly and freely give that information. But the amendment, as presented, says "shall include." So the question is, if a birth parent chose to not provide any of the information, what are the consequences? If there are no consequences, then it is misleading to say "shall" when in fact it may not happen. But certainly we are highly supportive of the questions being asked.

The Chair: Any further debate?

Mr. Jackson: What is the status of that point if this doesn't go through? Where do we have the assurances that all these questions are going to be presented? Is that in the bill somewhere else?

Mr. Parsons: It's currently in the bill.

Mr. Jackson: In which section?

Ms. Wynne: As the bill reads now, under the additional information section that Ms. Churley was amending, "The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history." So it is not mandatory, but the provision is there.

Mr. Jackson: Why are we not enumerating it in the kind of detail that Ms. Churley has included? The way that's written, that can be a simple sentence that leaves four lines for people to fill in information. For those of us who've been sitting around constituency offices with government forms for the last 20 years, I can tell you that

the largest single complaint is that it gets sent back because it wasn't answered properly.

I think this is a very good piece of work. If all we're apart on is whether it is prescriptive or voluntary—I'm just afraid that under your regulations, you're not going to capture some of these points. I can tell you this: For all of you who've filed for life insurance, it's hugely important in terms of your rating to determine at what ages your parents died and so on and so forth. Just on that alone, that faces every citizen when they want life insurance. This clearly states that, as opposed to the generally worded paragraph that's in the legislation. We won't see regulations for six months to a year, so there's no telling how this will be captured.

Mr. Parsons: The information that will come to the adoptee is not coming from a civil servant who is not emotionally involved in this. This is information that will come from the birth parent.

If we look at experience in other jurisdictions, and indeed if we look at birth parents here in Ontario who have been reunited with their adoptee, or not been reunited, I would suggest they're much more prone to want to pour out their heart. There is a joy and a relief at being able to share some of the information. In the vast, vast majority of cases, I don't expect that the birth parents will hold it back.

This amendment restricts it to certain things, where I think probably the other extreme will happen, and the birth parents will want to pour out all of the information they have.

The original bill does not restrict in any way, shape or form the information they can share and we do not wish to put restrictions on it.

Mr. Sterling: But your objection to this is that it's prescriptive. That's your objection; is that it?

Mr. Parsons: Our objection is that it appears to make something mandatory that in fact cannot be made mandatory.

Mr. Sterling: Why wouldn't we just change the word from "shall" to "may"?

Mr. Parsons: I would suggest that if you change it to "shall" then it isn't really that much different from the original part of the bill that just provides for the birth parent to share medical and family history.

Mr. Sterling: What section is that in?

Mr. Parsons: The section is 48.3(4).

Mr. Sterling: I just—

The Chair: Mr. Sterling, I am waiting. I'm just trying to see if anybody else wants to engage in this discussion. Mr. Sterling has the floor.

Mr. Parsons: I'm going to turn to staff. Do we have a form?

Ms. Krakower: We were looking at other jurisdictions for best practices in terms of forms and had looked at some quite good ones that we were thinking might be applicable in Ontario that went into incredible detail in terms of both the birth father's and the birth mother's side and went through absolutely every possible medical issue or situation you could imagine. That's the

type of information we'd be looking at the ORG providing to people and that would, I think, give people some ideas in terms of what they can actually provide. It would jog their memory about all sorts of detail in terms of their medical history and background.

Ms. Wynne: I guess the other thing is that in the bill, as it's written now, it's the person's medical and family history. There may be other things about the family that aren't medical but are still non-identifying that would be captured by a form. I think that's the other reason to leave it open, so that the detail can be inclusive.

The Chair: Any further debate? If there is none, then I will ask the question.

Mr. Jackson: Recorded vote.

The Chair: Shall the motion carry?

Ayes

Churley, Jackson.

Nays

Brownell, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment does not carry.

Shall section 7 carry? Those in favour?

Mr. Sterling: Just a minute.

The Chair: That's section 7. There are no amendments there.

Mr. Sterling: This is the no-contact section. Is that correct?

The Chair: Section 7. We dealt with page 19, which was refused, so the section stayed as it was. Can I take the vote, Mr. Sterling?

Mr. Sterling: Yes.

The Chair: OK. Thank you. I'm ready to take the vote. Those in favour—

Mr. Sterling: I want a debate on the—

The Chair: On section 7?

Mr. Sterling: Yes.

The Chair: OK. You have the floor.

Mr. Sterling: I just want to talk a little bit about why section 7 is so ineffectual in terms of protecting either party. I have heard other members on media talk about this particular section, saying to the public in general that this offers great comfort for one side or the other.

What this section doesn't do is deal with people who become aware of the information third-hand. So if a natural mother or an adoptee or a birth parent becomes aware of information and shares that information with third parties, there's nothing to prevent a third party from making the contact. Therefore, in addition to the other problems that I have with the no-contact section, which I believe in terms of the penalties is totally ineffectual, this is a real sham. The no-contact section is a real sham. Even in terms of the discussion we had over Ms. Churley's amendments, we were referring to probably other provincial legislation across Canada with regard to giving health information out, for instance. Of course,

Alberta, BC and Newfoundland don't have a no-contact section; they have a non-disclosure veto. So in terms of the non-disclosure veto, we're comparing, to some degree, apples and oranges when we're talking about the health information that people should be giving forward.

1650

I think it needs to be understood by people that if someone receives that very, very private information about another individual, there's nothing in this legislation which prevents the receiver of that information from sharing it with the rest of the world. They can share it with their neighbours; they can share it with their husband; they can share it with other people perhaps within the family. We had examples of people who had been to the point of being harassed by other members of the extended family of a person who had received this information.

So the whole notion that if the natural mother or the adoptee does not want to be contacted, does not want to be reminded about the particular matter—all that has to be done in order to skirt the penalty sections of this legislation is for someone other than the receiver of the information to do that contact. If I as an adoptee received information about my natural mother and I shared that with a friend and said, "I can't understand why my natural mother would be a no-contact with me," and that friend phoned up the natural mother and said, "You're really a bad person for not wanting to meet with your son or daughter," there's nothing that can be done to protect the natural mother from that kind of a call.

This whole notion that the no-contact has any impact on trying to protect a person from carrying on as they have before is bogus—as well as the argument I made in the Legislature on this, which is, who's going to prosecute either their natural son or their natural mother for breaking the no-contact rule? I mean, if somebody goes to the trouble of registering a no-contact notice, are they going to invite a lengthy legal proceeding with someone they want nothing to do with?

The notion that this provides some kind of protection when a disclosure is undertaken is really bogus. As we all know, when Mr. Ruby was in front of the committee, he indicated that the experience, under the Criminal Code, with no-contact orders of judges is quite disappointing for people who have got these kinds of orders from our criminal courts, because the police, in general—this sort of goes to the back of their work in terms of what they're doing. If they're not concerned about a physical problem, the police, I can guarantee you, will not step in to these no-contact-order situations.

I believe that the section is quite useless in terms of what it does. It doesn't really provide any protection. The only protection that you can provide in terms of that is the disclosure veto, where the person has control of the information, because once that information gets out, they have lost control of that information. If it goes to one of the parties—a birth parent or an adoptee—they can share it with the world, they can share it with everybody in town or they can share it with whomever they like, without any kind of penalty.

The Chair: Is there any further debate on section 7?

Mr. Parsons: Yes. If I could give a response to part of Mr. Sterling's—

The Chair: Of course. You have the floor, Mr. Parsons.

Mr. Parsons: There are penalties provided for a birth parent or adoptee who violates, but there are also penalties provided for others. In section 10 of the bill, section 56.1 says:

“Other persons

“(3) No person shall contact or attempt to contact a birth parent on behalf of an adopted person if the adopted person is prohibited by subsection (1) from doing so.

“Same

“(4) No person shall contact or attempt to contact an adopted person on behalf of a birth parent if the birth parent is prohibited by subsection (2) from doing so.”

The penalty that applies to them is the same penalty that applies to the adoptee or the birth parent. Is it legislation that would prevent someone from sharing this information with another person? No. I don't think that it's realistic to expect or to ask for that. I would suggest that finding out one is adopted and having access to the birth parent is probably something that they wish to talk to and get some support from others about. Indeed, we encourage counselling, where they believe it's appropriate.

The Chair: Any further debate on section 7?

Mr. Jackson: My view is slightly different. I've always felt that there's a responsibility on the birth parent to disclose all necessary medical information and other information as may be helpful, to the extent that they can protect and preserve their anonymity.

I was listening to CBC Radio last week when a woman got on the radio to discuss this bill and said, “Look, I came from a province where there was a no-contact provision.” What her daughter did was to go systematically to every single member of her family, one by one, and create difficulties in their lives. This woman had to move, had to change her name, alienate herself from her family, from being monitored, change her phone number and so on. This was a very disturbing testimonial.

Although I understand what Mr. Parsons has brought our attention to in subsection (5), it doesn't address that woman's concern in terms of—and I'm wondering how we can arrange it so that the contact veto is for that individual and their immediate family members, however we wish to deal with that.

Nothing can prevent or stop somebody from taking an ad out in the paper or registering by mail to a group of friends. We can't build legislation to fix that or stop that. So let's not dwell on that.

However, I think that the practice of—again, this gets back to why I was so adamant about Ms. Churley's motion, because I feel that the full force of law should be in effect if the adoptee has received all the necessary medical information and all it is is their inability to repatriate with the birth parent, which apparently we're still upholding in this legislation by a no-contact veto. It's not nearly as strong as a disclosure veto.

So when we get to section 10, I would hope that we're going to deal with something along these lines that indicates that we don't—and I have several amendments here dealing with victims of sexual abuse not wishing to be contacted by a parent who would have sexually assaulted their child. I want to make sure that there are further protections around the family so these young women who were raped by their fathers have the right not to be harassed by the father. Again, when we get to those amendments—I have some cases that still trouble me to this day. We should be in a position to protect those young women. So it goes both ways.

1700

I'm not as satisfied and comforted as the government would seem to be with some of the motions as they are currently before us, but I would hope that we will amend section 10 as well to try to attempt to minimize the kind of conduct that Mr. Sterling has expressed concern about. There are those out there whose lives have been nearly destroyed by it.

The Chair: Is there any further debate on section 7? I will now put the question. Shall section 7 carry? Those in favour? Those opposed? The section carries.

Section 8.

Mr. Sterling: Are these recorded votes?

The Chair: No, only if you ask, Mr. Sterling. If you want me to do a recorded vote, I will be happy to do that.

Section 8, page 20.

Mr. Jackson: I move that section 48.4 of the bill be amended by adding the following subsection before subsection 48.4(1):

“Application

“(0.1) This section applies with respect to adoptions that come into effect on or after the date on which section 6 of the Adoption Information Disclosure Act, 2005 came into effect.”

The Chair: Any comments? Any debate?

Mr. Sterling: Basically, this couples with the no-disclosure part of it, but says that, going forward, we have a much more open system when people are aware of the rules when they make arrangements for an adoption to take place. This includes the whole argument about retroactive legislation.

We have certain principles and fundamentals in our legal system and one of them is dealing with the rules of natural law. The rules of natural law are that you and I as citizens can rely upon the legislation of the day in order to determine what our actions are going to be. We make determinations about what we are going to do or what we're not going to do on what the rules are as of that day. The problem with going back as far as 30, 40 or 50 years in this legislation with regard to just a blanket opening of the adoption records—which this legislation, I would make the argument, does—is, why would people have faith in our legal system if legislators 20 or 30 years from now can change the rules around what would be perhaps the most significant protection that we had sought from the government?

We heard the privacy commissioner talk about the fact that there is no question that people were told they had this protection, that the government protected them. In fact, I got a letter from a natural mother today who said that not only was this protection told to her by people who were dealing with her but she was told in the court by a judge that she had this kind of protection in terms of privacy.

The whole aspect of law and the importance in law is that when you start fooling with retroactivity and changing the law of 20, 30 or 40 years ago, what you're saying to the people is, "You can't trust the law. You can't trust the system. You can't trust what the laws are today in terms of your actions." It creates a mistrust in us, in the Legislature, in terms of what we're doing. If you can't rely on what the law is telling you and what government officials are telling you and what the registrar is doing in terms of sealing records, then how can you trust what the laws of today are?

That's the notion of this particular amendment, coupled with the other amendments that we have put forward, which implement a disclosure veto. This amendment was drafted by legal counsel and follows the wishes of Ms. Cavoukian, our privacy commissioner. Therefore, I would argue that if you accept the disclosure veto, we say to people who are involved in this, it's a very open system going forward. Going back, you have the veto, but going forward, you don't have those same kinds of protections that we owe you, our citizens of the past, in this matter. That's what this particular amendment is about.

Ms. Churley: Briefly, in rebuttal to that: I speak, very clearly, as a birth mother who relinquished a child, and also as a former Registrar General of this province, as Mr. Sterling was as well. So I not only had personal experience, but I also know the law around this from both angles. I know what I was told and I also know the legalities around the contracts signed. I can absolutely assure you, speaking now as the former Registrar General, that there's nothing in the law that provides for the things that Mr. Sterling is talking about around confidentiality.

Speaking as a birth mother, and speaking to a lot of other birth mothers on the other side of this issue, I can tell you that many of us were told the exact opposite. It was mostly verbal; I'm surprised to hear that any judge would have said any such thing, because he didn't have the jurisdiction to do so under the law. I was told that it would be made easy for me to find my child when he reached adulthood, and for him to find me, quite the opposite of what some other mothers believe—a minority, actually, because most of us want to find our children.

We were told different things, which is one of the problems we're having to deal with here. There's nothing in law; there's nothing on the forms that we signed or saw. It's all dependent, on the whole, on what some social worker told us at the time. That's really important to remember: that some of us felt very let down when we

were told we would be helped to find our children and found that, on the contrary, we weren't; there was no help there.

The other thing I want to talk about is retroactive legislation. That is what this is all about. Nobody's saying otherwise, Mr. Sterling, as you know. If it weren't retroactive, we wouldn't need it, because adoptions today are open in various ways. Retroactive legislation is permitted in many jurisdictions when it's remedial in nature, for human rights issues and others. I can cite examples: the Indian Act, in terms of how it used to deal with female First Nations, is a very good example. When it's remedial in action and deals with wrongs that were done, which at the time were deemed appropriate, it is not uncommon.

I guess I'll close with this. There's so much to say, and we'll get into it a little later. That is the crux of the argument that the privacy commissioner is making. By the way, adoption and this whole area is not under her jurisdiction. I have no problem with her making statements about it, if she's got definite views, but she wrote a letter to me saying, "I have no jurisdiction in this area. Let me give you my opinion, but at the end of the day, it's up to the government to make these decisions, because it's a complex issue."

In closing, I would say that if you look back through history books, I think it was 1979 when Ross McClellan, a former New Democrat member here, brought forward—were you here then, Norm?

Mr. Sterling: Yes.

Ms. Churley: —brought forward the first disclosure—I know you were, Cam. Weren't you?

Mr. Jackson: Not in 1979.

Ms. Churley: —the first disclosure registry in North America. We were first then, and we're lagging way behind. The same objections and fears were raised then that we're hearing now about this, and it didn't happen. I understand that people have some of these concerns, especially when you get letters, as you do. I'd like to share with you—but there's no time now—the hundreds of e-mails and letters that I've received from the other side of this. There's no doubt that this is a wrenching and heartbreaking and deeply personal situation for mothers when they have to give up their children, and it's deeply heart-wrenching and personal when we try to find each other and hit roadblock after roadblock.

1710

It's not as though we're reinventing the wheel here, Norm. If you look at England, they've had this legislation without a disclosure veto for 20 years, and these kinds of things the privacy commissioner is talking about and you're talking about have not happened, as well as in New South Wales, even though the privacy commissioner cited an old study instead of the most recent study that shows—and there's no disclosure veto—the contact veto is working; in fact, it expressed surprise at how well it's working. So we need to update ourselves in terms of looking at existing legislation, not just within Canada but in jurisdictions that have had it a lot longer than we have. There's a lot to learn.

I'll speak a little bit more to these issues as we get more into detail about this, but there is all kinds of evidence in other jurisdictions that show that this kind of legislation works and that the kinds of concerns—I respect those concerns—being raised have not happened.

Mr. Parsons: The issue of retroactivity is the cornerstone of this bill. Don't think I haven't struggled over the years with the approach to it, because in general I do not support retroactivity, but retroactivity is appropriate when it undoes an injustice. Norm referred to natural law, and that it is not natural law to make it retroactive, but it's not natural law to not know one's parents or one's child. Natural law says that they know. Adoptees didn't choose to have a non-disclosure veto; they weren't part of it.

I firmly believe there were some individuals who were promised that their name would not be given out. There was no law basis for it. It was what was said at the time, because our children's aid societies exist to protect children and to find homes for children. But it was said in a different era. I can recall when girls in my class at high school would disappear for eight or nine months to live with an aunt and help them with something, and then would reappear, because the pressure at that time was that it was not socially acceptable. There was no expectation that the birth mother would want to see her child again. That was the belief at that time. I don't know how a birth mother who has given up her child feels, but as this committee knows, we lost our son last year. I think about him every minute of every day, and I think I have some sense of a birth mother's feelings that her child is somewhere. If we have a veto, then this law really doesn't take effect for 30 or 40 or 50 years. I'm supporting the bill as it's presented because I believe there is so much more good that will come of it. No law is perfect, but I believe the natural thing is for there to be contact between a child and their parent. I support the bill as it's presented.

Mr. Sterling: In response, I would just say to Ms. Churley that I understand her advocacy and I understand that there are many, many happy reunions and that they're very important to a lot of people. But we are going to become the jurisdiction that cares less about privacy rights than any other jurisdiction in our country. Alberta, BC and Newfoundland have a non-disclosure veto in their bills, and they know that only 3% to 5% of people take advantage of that. To me, with 250,000 files, as I understand there are—we could be affecting as many as a million people—there are a lot of different cases out there, and if only 3% to 5% of the people take up the veto, then many, many, 95%, of those reunions can go ahead if people want them to go ahead.

But there are people, a significant minority of people, who have written to me and to the privacy commissioner and said that this is going to be catastrophic for them and for their families. So why wouldn't we try to have a law where you would allow a disclosure veto like the only other jurisdictions that have opened up their records as we're proposing to do? Why wouldn't we do that? I don't understand the logic of not going there.

I must say as well to Ms. Churley that Dr. Cavoukian—she's a doctor of laws as well—expressed very clearly and well the reliance on the government to keep these records sealed and confidential. That was the understanding. The argument whether there was a law that said this and a law that said that doesn't matter. The confidence was, for those people who want to rely on that confidence, that they were told this was the case, and the government has carried on that way for 70 years. Now we're changing where we were; we're changing it to something else. So it is a retroactive and retrospective law that we're making here.

Those are the arguments that I am putting forward, that we can address the great bulk of adoptees and natural mothers who want to contact their mother or their father or their child, but by having a disclosure veto, we would allow for those people who have very personal reasons for not wanting to change their lives at this point in time, either for purposes of not dredging up very painful memories or for present family circumstances. We've heard about a lot of those. I really don't understand why this has to be the case.

The other part is, you talk about rights. Well, one person's rights are another person's wrongs. I think we had the Canadian privacy commissioner say that notwithstanding the rights that have been defined in this matter by the UN, you can't state that somebody has said that somebody has a right to do this without considering the offsetting rights of other people involved in the situation.

So this amendment is put forward, along with the disclosure veto. I would suggest it might be stood down until we consider my amendment with regard to the disclosure veto.

The Chair: I recognize that Ms. Churley wants to speak on the matter. Do you want to hear her comments before we deal with your request to stand down?

Mr. Sterling: Well, whatever.

1720

Ms. Churley: I don't want to stand down the amendment. We keep standing these things down. I know Mr. Sterling has held this opinion for a long time, and nothing's going to change his mind; I've discovered that. But I want to correct, in my view and in other people's view, since we seem to be discussing the crux of this issue for many of us here right now—first of all, this is not about reunion. Some are happy; some aren't. Some don't happen. Some people deny contact, and people have to deal with that, and we hear about it at these committees. I hear about it all the time. But what people say is, at least they know. So that's number one.

Yes, we're saying that any birth mother and adoptee has the right not to be contacted. That's in the legislation. This is about everybody, no matter what the circumstances of their birth, having the right, as we all take it for granted, to our own personal birth information, and to make choices, even if it's a small minority. They've done it in three jurisdictions and all the privacy commissioners have talked together and I recognize all of that, and they have their reasons, but again I come back to other

jurisdictions that didn't make those mistakes. What we found here in Canada in the jurisdictions that have done it is that it has caused confusion and hardship, and despite what they said about the ability for adoptees to get medical information, it's difficult to get, and there will be more court cases over it and eventually it will be changed.

Let's be leaders here. Let's take the high road, as they have in other jurisdictions. This legislation isn't setting up a two-tier system. Even if it's a small minority, because of the circumstances of their birth—that's what's being said here—let's further victimize them. So this person is not allowed as an adult to get their information about who they are and their birth certificate, which you have and I have, because of the circumstances of their birth, which they had no say in, no choice. What it would be doing is discriminating against them, to say you can't have it. But it is important. Not all the adoption community supports the contact veto. Some say that in a perfect world we should be able to contact whoever we want, but it is in there and that's why it's there, to protect people. When you're bringing in legislation to remedy a problem, to continue to deny a small sector that information is wrong and further discriminates.

So let's bear in mind that it's not about reunions; it's about adult adoptees, all of them, being allowed to have access to their personal information.

Mr. Sterling: I've got to respond. Basically it's not just about that issue, it's about privacy and confidential information. It is about people who have been told by the government of Ontario that their information will be kept confidential. We, in this legislation, are saying to all those people who have been told that, and there have been tens of thousands of people who have been told that, that we are breaking that word the government has given to them. And for what? To protect 3% to 5% of people who might have another right—I agree there could be a conflicting right, but we've heard of examples: incest, rape, abuse of children. Do we think that we should force these people to appear in front of a board, to say to a board of people they have no knowledge of, "I deserve a contact veto because of these particular circumstances"? Or do we not say to these people who have suffered very tragic circumstances, "We guaranteed you privacy, and if you implement a contact veto," and we know 3% to 5% of the people will do that, "then the information we said would be kept in confidence will continue to be kept in confidence"?

That's the argument I'm making, and to do what Alberta, BC and Newfoundland did. There are very few jurisdictions we know about in terms of wide open records, and we have heard about a significant minority of people in New South Wales who have suffered as a result of legislation which is very similar to the legislation which is being put forward here today.

The Chair: Thank you. Any further debate on that section? If there is none, I will ask for a vote on section 8, page 20. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Would staff like to make any comment on the next section? It's 48.4 and 48.4.3.

Ms. Hopkins: I'd like to let the members know that there's a typographical error in the motion numbered 21. If you flip ahead to page 21b and look at section 48.4.2(1) about halfway down the page, the heading on the provision is "Order preventing disclosure to adopted person (to protect a birth parent)."

Ms. Churley: Where are you again?

Ms. Hopkins: At 48.4.2(1). At the end of that section, the words "to the adopted person" shouldn't be there. Just cross them out.

The Chair: OK, "to the adopted person." Mr. Parsons, would you like to introduce the amendment, please?

Mr. Parsons: People may wish to go for a coffee or for dinner, and return. I will commence to read it, with some assistance from Ms. Wynne.

I move that section 8 of the bill be struck out and the following substituted:

"8. The act is amended by adding the following sections:

"Order prohibiting disclosure to birth parent (to protect an adopted person)

"48.4(1) An adopted person who is at least 18 years old may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give a birth parent the information described in subsection 48.2(1) about the adopted person.

"Same

"(2) If the adopted person is incapable, a person acting on his or her behalf may apply for the order, and the issue of the adopted person's capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed.

"Notice of application

"(3) The board shall give written notice of the application to the registrar general in accordance with the regulations.

"Procedural matters

"(4) The Statutory Powers Procedure Act does not apply with respect to the application, and the board shall decide the application in the absence of the public.

"Request from birth parent

"(5) If, while the application is pending, the registrar general refuses under subsection 48.2(6) to give a birth parent the information described in subsection 48.2(1) about the adopted person, the birth parent may request an opportunity to be heard in connection with the application.

"Same

"(6) The board shall take such steps as may be prescribed in order to ensure that the birth parent has an opportunity to be heard, but no person is entitled to be present during, to have access to or to comment on representations made to the board by any other person.

"Order

"(7) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the

order is appropriate in order to prevent significant harm to the adopted person.

“Notice of order, etc.

“(8) The board shall give a certified copy of the order, if any, or such other information as may be prescribed to the registrar general.

“Expiry of order

“(9) The order expires when the registrar general receives notice, and evidence satisfactory to the registrar general, of the death of the adopted person and the registrar general matches the notice with the original registration, if any, of the adopted person’s birth or, if there is no original registration, matches it with the registered adoption order.”

Ms. Wynne: “Finality of order, etc.

“(10) An order or decision of the board under this section is not subject to appeal or review by any court.

“Confidentiality of board records

“(11) The board file respecting an application shall be sealed and is not open for inspection by any person.

“Administration

“(12) Subsections 2(2) to (4) do not apply to notices, certified copies and other information given to the registrar general under this section in connection with an application.

“Order prohibiting disclosure to birth parent (to protect an adopted person’s sibling)

“48.4.1(1) In this section,

“‘sibling’ means, in relation to an adopted person, a sibling,

“(a) who is a child of the adopted person’s adoptive parent, and

“(b) who, before becoming a child of the adoptive parent, was a child of the adopted person’s birth parent.

“Application for order

“(2) If an adopted person who is at least 18 years old has a sibling who is less than 18 years old, an adoptive parent of the adopted person may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give a birth parent the information described in subsection 48.2(1) with respect to the adopted person.

“Order

“(3) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the adopted person’s sibling.

“Expiry of order

“(4) The order expires when the adopted person’s sibling reaches 19 years of age.

“Procedural matters, etc.

“(5) Subsections 48.4(3) to (6), (8) and (10) to (12) apply, with necessary modifications, with respect to the application.

“Order prohibiting disclosure to adopted person (to protect a birth parent)

“48.4.2(1) A birth parent may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general

not to give the adopted person the uncertified copies of registered documents described in subsection 48.1(1)

“Request from adopted person

“(2) If, while the application is pending, the registrar general refuses under subsection 48.1(6) to give the adopted person the uncertified copies of documents described in subsection 48.1(1), the adopted person may request an opportunity to be heard in connection with the application.

“Order

“(3) The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the birth parent.

“Expiry of order

“(4) The order expires when the registrar general receives notice, and evidence satisfactory to the registrar general, of the death of the birth parent and the registrar general matches the notice with the original registration, if any, of the adopted person’s birth or, if there is no original registration, matches it with the registered adoption order.

“Procedural matters, etc.

“(5) Subsections 48.4(3), (4), (6), (8) and (10) to (12) apply, with necessary modifications, with respect to the application.

“Reconsideration of orders prohibiting disclosure

“Order to protect an adopted person

“48.4.3(1) The following persons may apply, in accordance with the regulations, to the Child and Family Services Review Board to reconsider an order made under section 48.4:

“1. The adopted person.

“2. If the adopted person is incapable, a person acting on his or her behalf.

“3. A birth parent who, by virtue of subsection 48.2(7), is not given the information described in subsection 48.2(1) about the adopted person.

“Order to protect an adopted person’s sibling

“(2) The following persons may apply, in accordance with the regulations, to the board to reconsider an order made under section 48.4.1:

“1. An adoptive parent of the adopted person.

“2. A birth parent who, by virtue of subsection 48.2(7), is not given the information described in subsection 48.2(1) about the adopted person.

“Order to protect a birth parent

“(3) The following persons may apply, in accordance with the regulations, to the board to reconsider an order made under section 48.4.2:

“1. The birth parent.

“2. An adopted person who, by virtue of subsection 48.1(7), is not given the uncertified copies of registered documents described in subsection 48.1(1).

“3. If the adopted person described in paragraph 2 is incapable, a person acting on his or her behalf.

“Procedural matters

“(4) The Statutory Powers Procedure Act does not apply with respect to the application, and the board shall decide the application in the absence of the public.”

“Same

“(5) The board shall take such steps as may be prescribed in order to ensure that the interested persons have an opportunity to be heard in connection with the application, but no person is entitled to be present during, to have access to or to comment on representations made to the board by any other person.

“Incapacity

“(6) If a person acting on behalf of an incapable adopted person applies for reconsideration of an order, the issue of the adopted person’s capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed.

“Decision

“(7) The board may confirm the order or rescind it, and subsection 48.4(7), 48.4.1(3) or 48.4.2(3), as the case may be, applies in the circumstances.

“Notice of rescission

“(8) If the board rescinds the order, the board shall give written notice to the registrar general in accordance with the regulations.

“Finality, etc.

“(9) Subsections 48.4(10) to (12) apply, with necessary modifications, with respect to the application.”

The Chair: Any comments?

Mr. Parsons: This is a very long amendment, but the crux of it is that as the bill, as it was initially tabled, provided the opportunity for an adoptee to have a non-disclosure with the requirement that they have to convince a panel or board of it, this essentially provides equal rights to a birth parent who may wish to have non-disclosure. Based on experiences in other jurisdictions, it is doubtful if it will be used very often, but it does provide an opportunity to both parties to have the equal non-disclosure exercised.

The Chair: Is there any debate?

Mr. Sterling: I understand that this was offered to the privacy commissioner originally, and I think she would be receptive to making it go both ways in terms of both the adoptee and the birth parent. However, the problem that you face here is the test of why somebody who is told that their information is confidential should have to convince somebody why their information should not now be disclosed. You’re going to have a situation where somebody is going to walk in and say, “I was told that this information was going to be locked up forever. Now I have to come in and convince you that it shouldn’t be disclosed.”

The whole matter of privacy—I quote Ms. Cavoukian’s press release of today, which is, quite frankly, only based upon the Toronto Star article. She had not received, as I understand it, the amendments, which we only received at 1:30 today. But she said, “Privacy relates to one’s ability to control the use and disclosure of your personal information. It’s all about freedom of choice—making your own decisions about disclosing your

personal information—not having to convince someone else as to why they should be protecting it for you.” She also states, “The fundamental privacy rights of birth parents and adoptees who don’t wish to have their personal information disclosed must be protected—they should not have to convince anyone of anything, let alone have to demonstrate harm.... The government amendment does not satisfy the real concern of most birth parents and adoptees. The amendment I have suggested is not harm based. It is a veto based on fundamental privacy rights—rights that were promised by the government.”

I guess in some aspects this is a small improvement in the situation of the old bill. It really doesn’t meet the fundamental test that is there, that people were promised privacy. As I said, privacy is about controlling your own record, controlling the information about you, and we all know that this is very sensitive information. As I go back, this is a complete affront to the faith that these people had in their government to protect their most personal information.

The Chair: Is there any further debate?

Mr. Jackson: I have an amendment drafted for crown wards, and particularly it’s designed—I’m just trying to navigate through this amendment, which apparently covers all adoptees, which is in effect giving them an opportunity to go before a board and give reason that they can have a non-disclosure—correct? My amendment goes slightly further, because it says it’s an automatic veto, without question, until the adoptee becomes 19, and then they can advise if they wish to have their records disclosed.

My first question is, is my amendment in any way adversely affected by the passage of this section? That’s a legal question.

1740

The Chair: Ms. Hopkins, can you answer the question, please?

Ms. Hopkins: The motion before the committee now provides for an order to be made and establishes a threshold for the order. I understand that the motion you may be moving relating to crown wards doesn’t deal with orders. It would establish—

Mr. Jackson: An unfettered right.

Ms. Hopkins: Just a complete block to disclosure.

Mr. Jackson: Yes.

Ms. Hopkins: So your amendment could live with this proposal. It’s not affected by it.

Mr. Jackson: Thank you.

My next question then, Mr. Chairman, is the reconsideration of orders prohibiting a disclosure order to protect an adopted person. If I’m reading this correctly, there’s already been an order from the Child and Family Services Review Board saying that there be no disclosure. What circumstances am I to imagine would be the reasons why this matter would be reopened? If somebody could help me with the thinking and the logic of this.

Ms. Yack: There are a couple of situations. It could be that the birth parent obtained the order and then changed

her mind and wanted to have it rescinded; likewise for an adopted person. The bill is also structured that, for example, if the adopted person obtained the order and the birth parent went to the registrar general asking for information and was told they couldn't have the information because the order was there, the birth parent would be able to ask for a reconsideration of the order.

Mr. Jackson: The birth parent could ask for a reconsideration because it has come to their attention that their child has refused disclosure?

Ms. Yack: Has obtained an order prohibiting disclosure.

Mr. Jackson: So how real is it if you've got a right to appeal it?

Ms. Yack: You can obtain the order, and then, if there's reconsideration, both the birth parent and the adopted person would have an opportunity to be heard.

Mr. Jackson: OK. So after the adoptee says, "I don't wish to be disclosed," they've gone to the review board as someone who's no longer a minor and they have already won, in effect, their case to say non-disclosure, then some months or a year later, they find out that that's not good enough for the birth parent and they are now causing you to come back into a review situation. Is that correct?

Ms. Yack: The bill gives the authority to the birth parent to ask for reconsideration, yes.

Mr. Jackson: Has this been tried anywhere else? Where did you get the draft for this?

Ms. Yack: I don't know of another jurisdiction that has this provision.

Mr. Jackson: So how far does this deviate from the models in Alberta and Newfoundland?

Ms. Yack: They have disclosure vetoes.

Mr. Jackson: Right. Well, this is a disclosure veto as well; correct? It's just it puts it in the hands of a third party and then there's a dual appeal mechanism.

Ms. Yack: It has the effect of preventing disclosure, if the order is made.

Mr. Jackson: Until you go to appeal.

Ms. Yack: It's not a right of appeal, but if it's reconsidered and then the board changes the order on the reconsideration.

Mr. Jackson: So no one else has done this, to your knowledge?

Ms. Yack: Not to my knowledge.

Mr. Jackson: I sure would like to see the regulations that come out of this section.

You indicate the Statutory Powers Procedure Act does not apply. So then in what legal framework would the conduct of the review board be held?

Ms. Yack: It says the Statutory Powers Procedure Act does not apply because, although the Statutory Powers Procedure Act allows for a written type of hearing, it provides that both parties would have the other's submissions, and of course that would destroy keeping the confidentiality. Exactly how the process would be, I can't say. It does say that the parties would have an oppor-

tunity to be heard. Whether that would be by written submission—that's a possibility.

Mr. Jackson: Fair enough, but will we have the right for the person making application to appear before the board?

Ms. Yack: To appear in person?

Mr. Jackson: Yes.

Ms. Yack: The bill doesn't specifically say whether they'd be appearing in person or providing something in writing.

Mr. Jackson: I'm really having a hard time with that. I want to try to make this thing work, but I'm really nervous about the average 19-year-old getting sufficient legal advice to protect themselves. I'm thinking about my amendment, which I'm quite sure the government is going to defeat, to protect incest survivors and so on. These are victims. They are victims the rest of their lives. There should be some principles for their protection, and their inability to have a voice is of concern to me.

Part of the problem is that I only saw this two hours ago, so I'm trying to wrap my mind around it. I do know that the Statutory Powers Procedure Act provides fairness principles, but I understand why we can't—I guess the privacy commissioner has been unable to comment on these amendments?

Ms. Yack: No.

Mr. Jackson: And yet the minister was quite candid about the importance of her seeing them when she tabled the bill.

I can only note, for the record, my concern. The worst legislation is legislation that on the face of it says one thing, but in practicality does something opposite. That is my worry here. I support retroactivity, but I support some protections. This attempts to add them, but I am a little nervous about the turnstile approach to people's rights here: depending on who goes through it at what time.

I don't think I'm going to get any more answers, but I thank counsel for the ones she gave me.

The Chair: There are two other people who wish to speak: Mr. Parsons, and then I'll go back to Mr. Sterling.

Mr. Parsons: The older I get, the more I realize how complex life is. This is a complex issue. I've been around children's aid societies as a board member, foster parent and an adoptive parent since 1976, and I believe that I've probably put more emotions into this bill than into any bill that we've debated, with the exception of one bill.

I can understand and appreciate the argument of the birth parent having the right to block information, but at the same time, we have fostered 40-some children over the years, many of them children who have had indescribable things done to them that I could not share with this committee, even as non-identifying. You would not believe what had happened.

Some of them are now adults. Do they have the right to know? Yes, I think they do. Mr. Sterling talked very eloquently about the right of the birth parent. There's also the right of the child. If you have a right to contain, control and not let out your information, do you not have

the same right to get all the information that exists about you? Which is more compelling? There's the rub.

I've concluded that the adoptee's rights to access the information are very significant to me. When our oldest son was born, in the labour room was a girl of 13 having a baby. The attitude from the adults who came in with her was that it was a little problem, and they had to solve her little problem. The solution was to place it for adoption, and this girl had no say in it. It was a very paternalistic, maternalistic attitude: "We're going to look after it." This wasn't her little problem; this was her child. It turned out this was her daughter. Certainly, there were expectations at that time: "We've solved the problem for you. You don't have to worry about it. It's looked after." Well, for her, it wasn't a little problem; for her, she has a daughter somewhere.

1750

I believe there may even be people who believe they don't want contact with their child, and this bill will give them pause to think about that and to reconsider, and to reconsider it in light of today's environment and attitudes. I strongly support the approach now, that the adoptee has the right. I just believe there will be so much more good come of this bill.

The contacts are taking place now, with great difficulty, very unstructured and very haphazard. Whether this bill is passed or not, people will continue to seek out the other party. This bill provides some process for it, and I think recognizes both parties' rights to the best compromise possible. I have to support this section.

The Chair: Thank you, Mr. Parsons. Mr. Sterling, and then Mr. Jackson.

Mr. Sterling: The big problem here is that you're creating a very difficult structure to make a decision. Are you going to accomplish anything more with this section than you would by just giving a non-disclosure veto to some of the kids Mr. Jackson is talking about? Basically what you're saying is that you're going to set up a board that's going to hold a hearing, in secret, with one party in front of them. In the decisions this board will come out with, the test they're going to put forward is, "The board shall make the order if the board is satisfied that, because of exceptional circumstances, the order is appropriate in order to prevent significant harm to the adopted person's sibling." And then the other order is "significant harm to the birth parent."

It's going to be totally subjective. It just depends on the luck of the draw who you walk in and see in that closed room, where there's not going to be any record of the proceedings. There may be some record of the proceedings, but they will be sealed. The other side, which won't know this is going on, might have another argument. You're getting into circumstances where you're going to miss some people who probably should be protected by the CAS, at least until they're old enough to take care of themselves. As Mr. Jackson points out, how capable is a 19-year-old of taking care of himself or herself in terms of learning what the procedures are and taking action? Are they likely to take action?

You're making a very difficult process here. I understand why you don't have the Statutory Powers Procedure Act, because then people would appeal it to the divisional court, or what used to be the divisional court on the administrative procedure that was going on. So it's going to be a very subjective procedure. You're going to get one decision out of this group. You may walk into another group of board members and get a very different opinion in terms of what comes out.

I don't understand why you're going through all this when three other provinces have what I think is a much more implementable disclosure veto to protect the kind of people Mr. Jackson is talking about. Mr. Parsons—I have so much respect for him and his wife, who have taken care of so many young children—understands, probably better than any of us sitting around this table, about kids who have been ill-treated by their parents and those kinds of things. I don't understand why you're going to all of this trouble to set up a procedure which in all likelihood will fail in giving good decisions because of the structure that you're setting up, rather than just going the simple, implementable way of saying 3% to 5% of the people are going to choose this particular option. Most of them are going to choose the option for good reason, where they had traumatic experiences or they want to protect their child in the long run. I don't know, but it just seems to be impractical.

Mr. Jackson: I'm a little concerned that the simple words "significant harm," which are not identified in the legislation—there's not a section to determine what "harm" constitutes, so it needs further clarification.

I raised a question with the minister on the floor of the Legislature some weeks ago, which she dismissed out of hand, saying that it was inappropriate. However, I notice that she has now responded in the newspaper to the very same question I raised, and I want to quote this for the record: "Pupatello said she is concerned that there may be cultures in Ontario that believe in 'honour killings' to seek retribution for children born out of wedlock." She goes on to indicate that she has been thinking about this for some time and that it could happen here in Ontario.

I cross-reference that statement in the paper because we haven't heard from the minister other than in the media. I want to make sure we're not passing a motion that, by the minister's definition, means that they are threatened for life and limb only. I want to propose an amendment that would amend 48.4(7) to add the words "physical or emotional" before the word "harm," and the same amendment to 48.4.1(3), again, "to prevent significant physical or emotional harm." I think those are the only two spots that it occurs, unless I'm missing the other section.

The Chair: Mr. Jackson, did you write this amendment for us?

Mr. Jackson: No, I didn't.

The Chair: I believe we need it in writing.

Mr. Jackson: I know we need it in writing, but I don't want to have a recess while I write it out. Can I serve notice? I'll have it written for when we come back.

Maybe this is a good question for the parliamentary assistant. Oh, there it is. I found it: "of the birth parent."

In my many years in this place, I've come up with a lot of very trying cases: cases of incest, sexual assault and no-contact in our courts. Barring contact between a father who is sexually assaulting a sibling is perhaps one of the most disturbing of all. I know how poorly the current orders in our courts are being handled in terms of preventing access, so I'm loath to consider, without some added definition here, the notion that a board is simply looking at whether or not someone's life is being threatened. For women, who are the disproportionate number of cases—that's not to say there isn't sexual abuse of boys, but the disproportionate number, unfortunately, is of young girls and, I'm sorry to say, cases that I'm aware of where even crown wards, who are in the care of children's aid and foster parents, have been sexually assaulted. We know of those cases as well.

Again, I preface this with my worry that the government members are not going to support protection for this unique class of victims in our province, whose adoption is a function of child protection issues and not of the other circumstances that have been well documented around this table.

I wish to give notice that I will get that in writing, but I certainly want to make sure that the range for consideration is broadly based and not narrowly defined by the minister's concern about honour killings by people seeking retribution for children born out of wedlock, which she believes could happen in this province.

The Chair: Ms. Churley, something short?

Ms. Churley: Yes, something very short, just speaking to this. I'm not going to support this amendment, because I've made my views clear on how I feel about disclosure vetoes. But I'll also say—I'm sure we'll be discussing this later—that one of the things that we're not looking at is the other side to this. If there is even this reduced remedy for a disclosure veto from the birth parent, what's not been talked about is the ability for an adult adoptee who has had a disclosure veto slapped on them to be able to appeal, go to some tribunal and make the case that they're suffering extreme emotional damage or physical harm from illnesses through not getting the information. There's a lot of focus on one side, but not, I keep pointing out, on the other side.

We had deputants—some of them are here today—who talked about the extreme harm that they have suffered because they haven't been able to get information, and nobody is talking about that. It's critical that we address that as well, if we're going to be talking about remedies for people who don't want the information disclosed. There are no remedies for those who have that disclosure veto slapped on them, and they can't get the information that will help them.

The Chair: It is 6, and there's also a notice for an amendment which Mr. Jackson will provide to us tomorrow—it's already here. We'll recess until tomorrow at the same time, 3:30 or 4, whatever the proper time is. I thank you for your contributions to today's events. We'll see you again tomorrow. Thank you to all of you, including our guests.

The committee adjourned at 1804.

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Journal des débats (Hansard)

Mardi 31 mai 2005

**Standing committee on
social policy**

Adoption Information
Disclosure Act, 2005

**Comité permanent de
la politique sociale**

Loi de 2005 sur la divulgation de
renseignements sur les adoptions

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 31 May 2005

Mardi 31 mai 2005

*The committee met at 1601 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): May I suggest that we move to section 9 until Mr. Jackson comes back and then we'll go back to where we were. Would that be OK with everybody?

Section 9, page 23: Would someone move the motion, please. Mr. Parsons, do you want to introduce page 23, please?

Mr. Ernie Parsons (Prince Edward–Hastings): I move that section 48.5 of the Vital Statistics Act, as set out in section 9 of the bill, be amended by striking out “sections 48.1 to 48.4” and substituting “48.1 to 48.4.3.”

The Chair: Mr. Parsons, I'm sorry. I'm advised that this section is related to another one which we haven't addressed, so we can't deal with this one. Let me go back to Mr. Sterling.

Mr. Sterling, I understand page 22 is your amendment, which is section 48.4.1. Would you introduce it now, please.

Mr. Norman W. Sterling (Lanark–Carleton): No, I won't. Basically, the problem is that we haven't talked about the amendment dealing with the disclosure veto and this talks about advertising the disclosure veto. It's hard to put forward something when we haven't determined the other issue.

The Chair: Then let me go to the next section—

Ms. Marilyn Churley (Toronto–Danforth): On a point of order, Mr. Chair: Could we have somebody go and try to track down Mr. Jackson?

The Clerk of the Committee (Ms. Anne Stokes): He's on his way.

Ms. Churley: OK. That might be helpful.

The Chair: We will wait until Mr. Jackson comes.

The committee recessed from 1604 to 1605.

The Chair: We will resume dealing with Bill 183. Yesterday we were discussing the amendment to the

amendment on section 8, page 21e. Mr. Jackson is the one who introduced it. Perhaps you could read it for the record, Mr. Jackson, whenever you're ready. It's 21e.

Mr. Cameron Jackson (Burlington): I move that subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act, as set out in government motion 21, be amended by striking out “significant harm” wherever it appears and substituting in each case “significant physical or emotional harm.”

The Chair: Any comments?

Mr. Jackson: It's clear on the face of it. There is concern that “harm” can mean many things, and I'm not comfortable leaving that to the vagaries of regulations. I want to have as large a definition as possible, particularly for women, who I think are offended by parts of this bill that, in the case of victims of rape, incest, sexual assault or physical abuse, require them to retell that story before a panel. I find that offensive; in fact, as I raised in the House today, it probably offends the Victims' Bill of Rights, which entrenches the principle that a person should not have to go before a tribunal to prove they have been victimized. The inclusion of “physical” and “emotional,” in my view, particularly for women, is paramount in this circumstance.

I notice that yesterday counsel said that there is no experience with this legislation anywhere, and that they were uncertain as to what regulations are being considered, so it would be an unfair question to ask them what circumstances they might consider would constitute a definition of “harm.” So it's incumbent upon the committee, in drafting legislation, to provide further clarity for whatever tribunal panel or individuals will be bound solely by the legislation, which defines the parameters. The regulations allow clarity within the parameters. I give that distinction for all of us, because that's a very important distinction. The panel will never be able to stray outside of the legislative definition. In my view, “physical” and “emotional” cover virtually all elements of harm and it is not left to be interpreted under the regulations.

In this section—legal counsel can remind me—I've covered all three, instead of individually, so this involves birth parents, adoptees and the siblings of adoptees. It covers all three classes. I hope that's clear to the members.

The Chair: Before I ask Ms. Churley, Mr. Sterling, you have a question. You go first.

Mr. Sterling: I was going to ask legislative counsel, is there a regulation-making power under these sections to further define what “significant harm” is? I’m asking whether or not regulations can be passed by cabinet to further define what “significant harm” is.

Ms. Laura Hopkins: No, not on the government motion as it’s currently proposed.

Mr. Sterling: So whatever is in the act is going to be what the board member is going to base his or her decision on.

Ms. Hopkins: That would be the standard, yes, the words in the act.

Mr. Sterling: In terms of the amendment Mr. Jackson has put forward, is it better to have a wider section or a narrower section? I think his intent is to capture more people rather than fewer people.

1610

Ms. Hopkins: The original wording just refers to “significant harm” without describing the nature of the harm. The proposed amendment would describe the harm as either “physical” or “emotional.” I am not sure that I could identify another kind of harm that the board would consider if the words “significant harm” were left unmodified, but referring to physical and emotional harm would give guidance to the board about the kind of harm that the Legislature has in mind.

Ms. Churley: I just wanted to ask in regard to this amendment if there’s any section in the bill that can be amended or if this could be amended in such a way that this could also apply to adult adoptees if there is a disclosure veto slapped on their information, for them to be able to come forward and say that they are suffering from physical—i.e., health—problems or emotional problems as a result of a disclosure veto. I don’t believe that that takes the adoptees, on the other side of it, not being able to get their information into account, does it, Mr. Jackson?

Mr. Jackson: If you were listening to the question I raised in the House, that is not a concern for me, because if the birth parent or the father of the child was guilty of a criminal offence—sexual assault, abuse—they’re highly unlikely to present themselves and go forward toward a tribunal and say, “Look, I know I sexually assaulted my daughter 25 years ago, but I think I’m emotionally suffering because I’ve been disconnected from her.” I don’t see that as a problem.

Again, I’m trying to address the 1%, 2% or 3% of individuals who will be devastated by this and I’m trying not to use the example, Ms. Churley, of people who are concerned about social mores. I have been—

Ms. Churley: I’m not talking about social mores. I’m talking about serious harm, emotional and physical, if people can’t get their information, which we have evidence of.

Mr. Jackson: Well, I’ve answered your question. I’m suggesting to you that not only do I agree that they have a right to make that case, I’ve made that case for the last 20 years. I am just simply saying I don’t believe that someone who has engaged in abuse or sexual assault can

make a case that they are suffering emotionally because they don’t have access to their victim who is also their blood relative.

Ms. Churley: All right. That’s fine.

Mr. Jackson: So I’ve answered your question.

Ms. Churley: Could I ask counsel to answer the question? Is there any area within the bill where adoptees can come forward if there’s a disclosure veto so that they can also plead that they need information because of physical and emotional harm?

Ms. Hopkins: The opportunity for adoptees to come forward is addressed in part by the opportunity that they have to apply for reconsideration of the order. The difficulty is that the standard for issuing the order or rescinding it takes into account harm to the one but not harm to the other, yes.

Ms. Churley: So I would have to look at a way to amend that. OK. I’ll work on that. Thank you.

Mr. Parsons: I think there’s great merit to this amendment. I know just enough law to be dangerous, so bear with me. But my experience in the child welfare field as a volunteer and as an amateur is that when a child is deemed to be in need of protection, the courts have looked at three different definitions: physical, sexual and emotional, emotional being probably the most difficult to prove. Though you may suspect it, it is very difficult to prove. I’m aware of instances where individuals charged with “physical” for having done something of a sexual nature—a court has ruled that there was no physical harm to the individual.

So I would like to amend this amendment by inserting the word “sexual” between “physical” and “or.”

The Chair: So it’s an amendment to the amendment?

Mr. Parsons: Yes, an amendment to the amendment.

The Chair: So now we have the amendment to the amendment to the amendment. Is that a fair thing to say? Any debate? I would like to hear if there is any.

Mr. Jackson: I’ll accept it as a friendly amendment.

Mr. Sterling: Just a minute. I’m just trying to get straight what the last amendment was.

The Chair: Mr. Parsons, give us the wording again.

Mr. Parsons: It will be exactly the same as presented, except for—I’ll read it.

I move that subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act, as set out in government motion 21, be amended by striking out “significant harm” wherever it appears and substituting in each case “significant physical, sexual or emotional harm.”

Mr. Jackson: I want to thank Mr. Parsons for being helpful here. Perhaps I’m a little too sensitive to this issue, but I don’t think you can have insignificant sexual harm to somebody, so I’m having trouble with the word “significant” sexual harm. Any women who have been involved in this issue know this is a very sensitive issue, and I think you understand it as well. Physical harm can be significant or it can be less significant, but sexual harm, as our courts and our society have deemed, is all significant. I’m comfortable if we eliminate the word

“significant” and just have “physical, sexual or emotional harm” and leave it as simple as that.

Mr. Parsons: I think we’re trying to achieve the same thing.

Mr. Jackson: I don’t want to offend.

Mr. Parsons: I’m happy with that if you are. I would just like to be consistent with the other parts of the—

The Chair: I’m sorry, Mr. Parsons. Did you say you were prepared to drop the word “significant” or not?

Mr. Parsons: I think Mr. Jackson’s correct. I intended this to be a friendly amendment. If you would prefer simply to change your wording—

Mr. Jackson: That’s helpful, Mr. Parsons. I appreciate it.

The Chair: So basically, we have a friendly amendment, which means we don’t need an amendment to the amendment.

Interjection.

Mr. Parsons: I’ve got to take that back. We’re having difficulty with the concept of dropping the word “significant.”

The Chair: So your amendment to the amendment is still the same, including the word “significant”?

Mr. Parsons: My mouth is not connected to my brain at all times. It’s an asset in the profession I’ve chosen to follow. I will stick with the amendment and simply add “physical, sexual or emotional.”

The Chair: So it’s not a friendly amendment, but it is an amendment in itself, and that is the only thing we’re discussing right now.

Mr. Jackson: I cannot be party to trivializing sexual harm. I just cannot. It’s affected my family. I respect the personal concerns I hear being expressed across the table; I have similar ones. Your intention is not to trivialize it. This is the wordsmithing that says you have to prove—first of all, let me say I’m offended that a woman who’s been raped has to go before a panel made up predominantly of men and plead the case that she’s suffered emotionally. I’m deeply offended by it. I was offended when women had to go before a panel of men at a hospital to plead to allow them to have an abortion. That was the last tribunal that I recall doing this. I don’t like this.

I’m trying to make this bill better, and I’m trying to make sure that a very small group of individuals in this province—we’re dealing with less than 1,000 individuals, if we understand the current case files in our CASs accurately. This is being designed for them.

I have a letter right here today that gives me some of the details of how badly abused this child was. He’s a little boy. It did all three of these. The child will not come out from underneath this. After 10 years, he’s still suffering. This legislation asks that on his 18th birthday he have the capacity—I’m using that legal word within the context of laws in our province—to know that his perpetrator will have access to the knowledge of his name, his location and everything else if you don’t file an objection and are capable, or have a third party to capably present your case over the course of the twelve

months. If you miss that window, then this individual could present themselves on your doorstep.

I want to support this legislation. I’m really having trouble with this section. So I will vote on “significant physical”—we could change the words, “sexual and/or significant physical or emotional” if you want to separate, I’ll work it in, but I cannot trivialize sexual harm to an individual. All sexual harm is devastating, whereas some forms of corporal punishment were not devastating, for many of us, when we were growing up. But it is sexually; emotionally is a harder one to define. I accept that. It is more difficult for a six-year-old who has been sexually assaulted to articulate that at age 18 than it is for a 14-year-old who was sexually assaulted and bore a child as a result of it. So all sexual assaults here are significant.

1620

Mr. Parsons: I really think we’re trying to achieve the same thing. I sensed that yesterday, and I sense it today. I’m wondering—

Mr. Jackson: What is your objection to the wording?

Mr. Parsons: If I could retract, I’ll withdraw my amendment. I’m wondering if instead after “in each case,” it read, “sexual harm and/or significant physical or emotional harm,” so that “sexual harm” does indeed stand on its own, because I agree, there is no insignificant—

The Chair: So that satisfies the “sexual” part.

Mr. Parsons: So following “in each case” we’d have “sexual harm and/or significant physical or emotional harm.”

The Chair: That is the amendment. Again, it’s on its own. Are there any more comments on that? Otherwise I’ll be happy to take a vote on that amendment to the amendment.

Mr. Jackson: So have you asked me if I accept this as a friendly amendment?

The Chair: No, I’m told that contrary to what we do municipally, here we can’t. It’s a motion on its own, so I will have to take a vote on Mr. Parsons’s amendment by itself, and then I will come to your motion.

Mr. Jackson: No, it’s an amendment to an amendment.

The Chair: Yes, that’s what it is.

Mr. Jackson: OK, so he’s amending my amendment.

The Chair: Exactly.

Mr. Jackson: Very good. So he’s inserting the word—

Mr. Parsons: “Sexual harm and/or significant physical or emotional harm.”

The Chair: That’s all we’re discussing right now. Is there any debate on that amendment to the amendment?

Mr. Sterling: Where’s legislative counsel?

Mr. Jackson: Give her a moment.

The Chair: Counsel, I think Mr. Sterling had a question for you. Could you please ask the question again, Mr. Sterling?

Mr. Sterling: Can you read the amendment as—

The Chair: Clerk, would you read the amendment to the amendment, please?

The Clerk of the Committee: Substituting “in each case sexual harm and/or significant physical or emotional harm.”

Mr. Sterling: Can you put “and/or” in? No? OK, that’s what I’m asking you about. So what should we put in?

Ms. Hopkins: From a drafting point of view, instead of “and/or” I would suggest just “or.”

The Chair: Mr. Parsons, you may want to hear that part. Would you repeat that, please, for Mr. Parsons?

Ms. Hopkins: From a drafting point of view, instead of saying “and/or” between “sexual harm” and “significant physical or emotional harm,” I’d suggest that we say “or.”

Mr. Parsons: I’ve had nearly eight hours of legal training, so I would defer to your opinion.

The Chair: So are you satisfied, Mr. Jackson?

Mr. Jackson: So what you’re saying is that the board is now adding an additional reason that the veto would be extended—authorized—if, in their opinion, there is a chance they might be sexually assaulted again?

Mr. Parsons: Yes.

Mr. Jackson: OK.

Mr. Parsons: It’s not based on what happened in the past, but a fear or belief that it might happen.

The Chair: OK?

Mr. Jackson: Well, no. That’s the part—I want to start with a question, if I may, Mr. Chair.

The Chair: Yes, you can.

Mr. Jackson: This would be for legal counsel and for the representative from the adoption registry department.

As I understand it, this bill states that—and I will get the section. This bill in section 48.4—in section 8, 48.4(3)—no, sorry; that’s emotional and physical harm. I’m sorry.

The registrar of adoption information would be wound down, and therefore some records would no longer be available in the process. I wanted to ask you how CAS records are being treated under the new legislation. The reason I’m asking that is that the CAS records contain details around the issue of the conduct of the birth parent, the adoptee, the state of mind of the adoptee and the state’s view of the degree of risk associated. I might remind you—I’m sorry, that’s rude. It concerns me, and you don’t need to be reminded, that a 15-year-old who is caught in this only has three years before the bill takes effect. So can you help me navigate through that? I have some concerns because I’m aware of what’s contained in those records. I’d like to know if these records will be available to the tribunal.

Ms. Susan Yack: Disclosure of information by children’s aid societies and others is dealt with in section 162.3 of the bill, and it provides for regulations to be made dealing with information that would be disclosed and to whom it would be disclosed.

Mr. Jackson: Is this tribunal picked up in that?

Ms. Yack: It says, “A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.”

Mr. Jackson: That’s 162.2?

Ms. Yack: It’s 162.3(2).

Mr. Jackson: Oh, sorry. OK, “that relates to adoptions.” By legal definition, does that include disclosure?

Ms. Yack: When you say, “Does that include disclosure?”—

Mr. Jackson: “That relates to adoptions.” “Information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed.” OK. So we’re left to the regulations to determine whether or not the tribunal has access to those records.

Ms. Yack: That’s right.

Mr. Jackson: OK. The tribunal currently has access to those—what do we call this?

Ms. Yack: Child and Family Services Review Board?

Mr. Jackson: Yes. They currently have access to CAS records for appeals—

Ms. Yack: I’m not sure in what section you’re thinking that they would have access to those records.

Mr. Jackson: OK. So we would need to put in legislation if we wish to have those records accessible to the tribunal.

All right, let me ask the question the other way: Does the 18-year-old, who’s now of age, have a right to her CAS records?

Ms. Yack: The CFSA doesn’t have—there’s no legislation in force that deals with access to CAS records. This subsection just leaves it to regulation as to what information would be given and to whom and in what circumstances.

Mr. Jackson: Well, this is a leading question: Don’t you think a child has as much right to the information about their adoption as they have a right to find out who their mother was?

1630

Ms. Yack: I don’t think that’s really a question I can answer.

The Chair: That’s political., I would suggest.

Mr. Jackson: OK. But we are giving the right to the birth mother to have access to information to which she was a party at the point of adoption; we are now not entrenching in law that we give it to the child once they become an adult at age 18. The mother has access to the knowledge of the records by virtue of being a participant. She surrendered her child; she signed some kind of documentation; she may have participated at the level of a court. Correct? So it is a double standard that we allow the parent to have that knowledge—it has been bothering me since I read these amendments. The question that I want to ask you is: How will a child who has been the victim of a sexual assault by a family member know that, upon turning 18, if they don’t have access to their records?

Ms. Yack: As I said, there is not legislation in force that deals with access to CAS records. However, children's aid societies do give information to adoptive parents when placing children for adoption.

Mr. Jackson: They have a duty to the adopting parent. Is there anything in the regulation that says that the adopting parent—

The Chair: Mr. Jackson, could I recommend to all of us that we stick to the amendment to the amendment? Once we finish this, we can get into the rest. I'm thinking of talking to the actual section.

Mr. Jackson: All right. I'll wait until you finish your ruling, and then I'll respond to it.

The Chair: What I'm suggesting to all of us is that there are too many amendments. I would like to deal with the last one. If we can deal with that, before we finish with the section we can make all the general statements. The other thing—

Mr. Jackson: OK. Are you done with your ruling?

The Chair: Mr. Jackson, please. The other observation I have is that I suggested that the staff is here to give us legal opinions, not political opinions.

Mr. Jackson: I asked one question of that nature, Mr. Chair.

Ms. Churley: I have a point of order.

The Chair: A point of order, before I recognize Mr. Jackson. I also saw Mr. Ramal wanting to speak before, but a point of order has precedence.

Ms. Churley: It was that that I was going to speak to. We're speaking to this amendment, and I understand where the member's going—

The Chair: Point of order, please.

Ms. Churley: I'm setting up my point of order, Mr. Chair. I understand where Mr. Jackson is going with this, but my point of order is that somewhere further on in this package we'll be dealing with amendments to this issue, because I think it's one that we all recognize—I know the Liberals have one, and I have one—we have to deal with in terms of what happens to those records. I'm just trying to facilitate some movement here, because we are going to be dealing with that particular section.

The Chair: I thank you for that. Mr. Jackson, the floor is still yours.

Mr. Jackson: If we are creating a section here that allows a person to apply for a disclosure veto—that's what this section's about—I'm trying to establish whether or not an individual is even in a position to know that they might need one. I'm thinking of the adult adoptee. That's why I'm trying to understand how this reveals itself—

The Chair: It's an amendment.

Mr. Jackson: Of course it's an amendment, but of what value is it?

At the point when I was responding to the Chair, you were sharing with me the fact that the adopting parent has the knowledge. So now two out of the three individuals have the knowledge. There's no guarantee that the adult adoptee will be informed. I'm not going to read into the record the letter of anguish by an adopting

parent who was asking the question, "When should I tell my daughter this information?" If she's never told, how can she defend a right that we're giving this individual who's now an adult?

To be fair, I'm asking a legal question, because I don't know if this has been thought through from its legal perspective, that you've given that right to two out of the three individuals involved and not given it to the one who was sexually assaulted.

The Chair: Thank you. Why don't you give us your opinion, and then I will have the clerk read the amendment to the amendment so everybody is on the same page. Can you give the answer, please?

Ms. Yack: If you're asking me if the act or the bill says that a children's aid society has to inform an adopted person of certain matters, I would say there's nothing I'm aware of in the act or bill that says that.

The Chair: OK. Thank you. Now, could the clerk remind me and everybody else what it is that we will be voting on?

The Clerk of the Committee: On the floor at the moment is an amendment to Mr. Jackson's amendment that replaces the last line of his amendment and replaces the final words, substituting in each case "sexual harm or significant physical or emotional harm."

The Chair: That's on the table. Do I have any more debate?

You're OK, Mr. Jackson, with that? Thank you.

Mr. Sterling.

Mr. Sterling: The same point occurred to me last night when I was thinking about this, and that is that, essentially, what happens here is that the natural mother, who is aware of the circumstances associated with what's happened with the child, is put in the position of having to go to this tribunal to protect the adoptee she has given up at some place along the road, because she's the only one who has knowledge that there's somebody bad in the background. That's correct because, basically, the adoptee couldn't apply under this section to get a block veto or disclosure veto, because the adoptee doesn't have any knowledge of how bad a character the father was.

Ms. Yack: The bill provides for three different types of orders: one to protect a birth parent, one to protect an adopted person and one to protect a minor sibling of an adopted person. It says, "because of exceptional circumstances, the order is appropriate in order to prevent significant harm." I know there's a motion to amend that. It does not focus on harm which happened in the past, but to prevent significant harm.

Mr. Sterling: But the evidence would be that this person did something in the past and therefore is capable of doing something in the future. That would be the fear of anybody who—

Ms. Yack: That could be one example.

Mr. Sterling: If there was a straight disclosure veto and the adoptee said, "I want a disclosure veto," then he or she could do that. But under this circumstance, where you're forcing him in front of a board, he doesn't have knowledge of the case. He can't argue before the board

“significant harm” because he’s not aware of what happened to him when he was small or what happened when his mother was raped, or whatever.

The Chair: Only on the amendment to the amendment.

Mr. Khalil Ramal (London–Fanshawe): I just want to say we’ve been talking for a long time. I know it’s a very important issue to be raised and asked, but I’m wondering what we’re doing right now. We have two amendments before us, one from Mr. Jackson, I think, and a second one from—

The Chair: I’m ready to take a vote, if there are no more comments. Are there any comments on the amendment to the amendment? I will now put the question.

Shall the amendment to the amendment carry? Those in favour? Those opposed? Only one opposed. It carries.

Now we are left with the amendment to the original motion. Are we ready for a vote? OK.

Shall the amendment carry? Those in favour? Those opposed? The amendment carries.

Now the motion, as amended: Any comments?

Ms. Churley, I understand that you may have another amendment. Now that we are on the main motion, with the two amendments, is there one amendment from you?

1640

Ms. Churley: Yes. I’m just getting a copy made. I don’t have a copy at the moment.

The Chair: So we’ll wait until we get it, and then you can read it into the record. Do you wish to make some comments on what you’re asking to amend, or do you want to wait for the actual copy?

Ms. Churley: I can wait. They were the comments I made previously about giving some remedy to adoptees who are faced with a disclosure veto, so that they are able to come forward and try to show that there would be significant harm, either emotional or physical, in not getting their information. That’s the gist of the amendment, simply put.

The Chair: Just wait a moment until we get the actual copy. If anyone wishes to make any comments, since we heard Ms. Churley’s comments, I’ll be happy to—

Mr. Ramal: We’re not dealing with the amendment from Mr. Parsons?

The Chair: No. This amendment will be addressed first, and when it’s dealt with one way or the other, then we’ll still be left with the original motion with all these amendments. We’ve already gone through two; we’ll see if the third one goes through or not.

Ms. Churley: We’ll have the copy in a moment.

Just so you understand, it is to address the issue I’m concerned about that this doesn’t deal with: an adult adoptee who discovers a disclosure veto and who is suffering from either physical or mental—again, “significant”—we’ll have to see; I forget now how it’s worded. We just wrote it. They would be able also to go to the tribunal to show that they’re suffering from significant physical or emotional crises that might be greater than the sealing of the records, so that they can get their

information. That’s what the motion will do. Would people support that?

Mr. Ramal: I take it that “significant physical or emotional harm” does not include sexual etc.? It’s not open to include everything as an umbrella? Just a question. We keep adding and expanding. This title doesn’t include all these concerns?

Ms. Churley: What’s the wording of the one we finally just passed? I can’t remember.

Clerk of the Committee: The motion as it stands, as amended: “Subsections 48.4(7), 48.4.1(3) and 48.4.2(3) of the act”—

Ms. Churley: Just the wording.

The Clerk of the Committee: OK—“be amended by striking out ‘significant harm’ wherever it appears and substituting in each case ‘sexual harm or significant physical or emotional harm.’” That’s the motion, as amended.

Ms. Churley: That’s what was just passed.

The Chair: Yes. By the way, at the end of the day, any amendments which we’ve already agreed to are attached to the original motion. If this one goes through, it will be attached to the original. If it doesn’t, then it stays as it is presently.

Ms. Churley: OK. I can now read this. Section 8 of the bill, government motion 21:

I move that subsection 48.4(7) of the Vital Statistics Act, as set out in government motion 21, be struck out and the following substituted:

“Order

“(7) The board shall make the order if, in the opinion of the board, the harm to the adopted person that would result from the disclosure is significant and is greater than the harm to a birth parent from prohibiting the disclosure.”

The Chair: Any debate on the amendment?

Ms. Kathleen O. Wynne (Don Valley West): I understand the intention of this amendment. I also understand that we’re dealing with competing interests, and I want to refer back to the member for Toronto–Danforth’s remarks yesterday that this is such a difficult issue of competing rights. I think that we all have to acknowledge that. I’m not going to support this amendment, because I think there’s a degree of subjectivity that will come into this that will make it very difficult to determine which harm is greater. I think it would be very difficult to set down criteria that would demonstrate which harm would be greater. So although I understand the intention, I’m not going to be able to support this.

The Chair: Any further debate? Mr. Sterling, please.

Mr. Sterling: This is just one way. In other words, this is only if the veto disclosure is, in essence, against the adopted person. It’s not the other way. Why wouldn’t you do it both ways? If you’re going to—

Ms. Churley: Oh, I don’t care. I’ll drop it. I want to get through all of these amendments. It’s clear I won’t get support. I withdraw. There’s no reason to have any more discussion.

The Chair: There is a withdrawal; I'll accept the withdrawal.

Basically there is the original motion with the two amendments on the floor. Are there any questions? If not, I'll take a vote on the motion, as amended.

Mr. Sterling: What are we voting on now?

The Chair: I just said it, Mr. Sterling. There is the original—

Ms. Wynne: Page 21.

The Chair: It's the original motion, plus the two amendments that both—

Mr. Sterling: So we're talking about all of it, 21, 21a, 21b, 21c—

Clerk of the Committee: Plus Mr. Jackson's and Mr. Parsons's amendments.

Mr. Sterling: Yes, those have been dealt with.

The Chair: No, but they're incorporated in the original motion.

Mr. Sterling: OK.

The Chair: OK. Are we ready?

Mr. Sterling: No, I've got some questions about the board.

The Chair: I would ask everybody to listen to Mr. Sterling. That's the only way we're going to get through this, please.

Mr. Sterling: Can you describe what will go on at the board; in other words, is this going to be a single person, a panel? Do we know?

Ms. Yack: It doesn't specify if it would be a single person or more than one person.

Mr. Sterling: So it could be one person then? It could be an individual?

Ms. Yack: That's possible.

Mr. Sterling: Which I object to, incidentally. I think I want to put an amendment that the board be composed of at least three people. I would like to put a motion forward to amend this particular part.

The Chair: You know you've got to put it in writing.

Mr. Sterling: Yes, I'll have to do that. I'd like to also ask—

Ms. Churley: A panel.

Mr. Sterling: One of the problems is, we only got these amendments yesterday, so it's difficult to assimilate what's being created here and take into account a procedure that you can make as fair as possible. The actual hearing that will take place is not according to the Statutory Powers Procedure Act. Is there any procedure at all that will be followed?

Ms. Yack: I point you to subsection 48.4(6): "The board shall take such steps as may be prescribed in order to ensure that"—in this case—"the birth parent has an opportunity to be heard, but no person is entitled to be present during, to have access to or to comment on representations made to the board by any other person." There are similar provisions when the other persons are asking for an order.

Mr. Sterling: That's 48—

Ms. Yack: Subsection 48.4(6). It's page 21a.

Mr. Sterling: So that's going to be prescribed, right? Is there any record of the proceedings?

Ms. Yack: This is all that addresses the procedure, and it just says "take such steps as may be prescribed."

Mr. Sterling: So there's no requirement to have a record of the proceedings or what the evidence was or what the proponent said?

Ms. Yack: There's nothing else that addresses that.

Mr. Sterling: And there's no requirement for the board to explain its decision? It can be yes or no?

Ms. Yack: I'd really have to say that it requires them to give an order, and everything else will be prescribed by regulation.

Mr. Sterling: Sorry?

Ms. Yack: It requires an order, and the other steps will be prescribed by regulation.

Mr. Sterling: So the only procedure is what's in subsection (6) and that they may give an order, I guess. If they turned somebody down, they wouldn't give an order.

The Chair: Is there any further debate on the matter?

Mr. Sterling: I have an amendment.

The Chair: Oh, yes. The amendment has to be given to us in writing so we can make copies.

Mr. Sterling: I'm still working on it.

The Chair: You're still working on it. Why don't we recess for five minutes, so we can stretch our legs and our minds. We'll come back in five minutes.

The committee recessed from 1652 to 1707.

The Chair: I believe the motion is here. Mr. Sterling introduced it. Mr. Sterling, do you wish to read the motion for the record, please?

Mr. Sterling: I move that government motion number 21 be amended by adding the following section to the Vital Statistics Act:

"Procedural matters

"48.4.4(1) When making decisions for the purposes of sections 48.4 to 48.4.3, the Child and Family Services Review Board shall sit as a panel of at least three members.

"Same

"(2) The board shall conduct proceedings under sections 48.4 to 48.4.3 in accordance with such procedural requirements as may be prescribed."

The Chair: Any comments?

Mr. Sterling: The second section was put in from a suggestion that I think legislative counsel made to me that there probably should be some kind of procedure set down for the three members of the review board. I'm told by legal counsel for the ministry that in several other boards that the Child and Family Services Review Board strikes, they usually have three members on their panels. Perhaps you'd like to comment on that.

Ms. Yack: The regulations made under the Child and Family Services Act say that for the Child and Family Services Review Board, three members constitute a quorum.

Mr. Sterling: Are you saying that we do or we don't need this then?

Ms. Yack: The regulations already say that three members constitute a quorum for the Child and Family Services Review Board. I think I have said before, it may be one, but as I mentioned, that's the Custody Review Board and they're sitting as a different board then.

Mr. Sterling: OK. I'm putting forward the motion anyway, and by putting it in the act, then it's there and people can see it.

The Chair: Is there any further debate other than what Mr. Sterling has said?

Mr. Parsons: Yes. I cannot support this, for a number of reasons. First of all, I think it falls within the regulations. The discussion to this point has been that someone has to appear in front of a panel, when in fact the regulations have not yet defined whether it can be done by electronic means or whether it can be done by letter. I don't think we need to define it at this point.

Secondly, maybe the right number's three, maybe the right number's five and maybe the right number is flexible; it may be one individual. It is incredibly difficult for a victim of assault to sit and tell their story, and maybe for some individuals one is the right number. I can't support it. I've worked with too many victims of assault who revisit the assault when they talk about it. So I don't believe at this stage we should define the number. I would prefer to leave that for regulations.

Mr. Sterling: I'd like to respond to that. The whole idea of having three people is that there's no appeal from this particular kind of an order. We're not talking about a normal kind of situation where you might be able to appeal to the courts if a procedure was broken or whatever it is. I just find that if you have three people in a room, they're more likely to carry on in a somewhat objective manner and on the basis of some kind of principles, rather than if one person is charged with this particular task. We may get someone who is extremely pro giving disclosure vetoes or you may have somebody who's not. My view is that there's safety in numbers. When it's a closed-door kind of procedure, I think that having three people make a decision is just eminently safer in terms of the outcome being somewhat consistent from time to time, as they hear these cases.

The Chair: Any further debate? If there is none, I will now put the question.

Shall the amendment carry? Those in favour? Those opposed?

The amendment does not carry.

We are left again with the original motion with the two amendments, which we have debated. Is there any further debate on that?

Mr. Jackson: Last night, I was intrigued by legislative counsel's missive to me that the government had come up with this section of the bill on its own. So I went and got a copy of the New South Wales legislation, and I found it rather instructive. The reason I found it instructive is because we are, in fact, modelling ours after New South Wales. When I look at this, it contains some additional elements which are contained—points of sensitivity. I'll just read one in to the record. I'd like to

present it as an amendment, but I need assistance as to where, because I'm creating a new section in section 8. That is that the board may impose—and of course, "the board" refers to the CFSRB—additional conditions that may include, but are not limited to, "conditions requiring the person entitled to the adoption information to undergo counselling by a person specified" by the board "before the adoption information is supplied."

Counselling is controversial, and that's why I'm avoiding anything that refers to it as mandatory. But where the board is making a judgment call that a person could suffer emotional and physical harm, but not necessarily significant, they are now saying they will have access to the information. I believe that the board should have the power to authorize counselling in order to ensure the emotional safety of the individual.

Again, we're cobbling these together by virtue of a model which the minister, by her own statement, many times—that is a wonderful model down there. So I'm trying to read through it as much as I can. She has commented further, and I would need help with this, but there are her concerns, as stated in the paper, about people whose lives may be put at risk and therefore there may be some conditions involving peace bonds and other forms of legal surety that citizens who may be put at risk can be put in.

I would need some guidance as to which sections of this legislation deal with the orders, because right now it talks about the notice, the expiry, the order; it doesn't talk about conditions. I guess that might be the first title, and I'm looking to legal counsel to assist me.

The Chair: I believe that staff is aware of what you want to do.

Mr. Jackson: I have it written out.

The Chair: In regard to the section, I think you were asking which section—

Mr. Jackson: It needs to be titled and then—

Mr. Sterling: Could I ask a question? While we're having this done, and with regard to this section, it says, under section 11 on page 21(a), "The board file respecting an application shall be sealed and is not open for inspection by any person." So you put it in an envelope and you seal it. Who can open it?

Ms. Yack: I guess all I can say is what the subsection says.

Mr. Sterling: So why would you keep the record? Why wouldn't you burn it?

Mr. Jackson: There's an appeal mechanism—

The Chair: The question is for staff, I believe. I'm sure you have good intentions, Mr. Jackson.

Ms. Yack: Sub 10 says that the order or decision "is not subject to appeal or review by any court." The order can be reconsidered, though.

Mr. Sterling: Where's that?

Ms. Yack: "Reconsideration of orders" is 48.4.3.

Mr. Sterling: If you say that nobody can open the file, nobody can open the file. Is that right? It's in legislation. You can't change that by regulation. I don't understand. I would have thought you would want the file to be open if

you were reconsidering it. Maybe you can think about that while we are getting this amendment drafted.

The Chair: Was that your question?

Mr. Sterling: I'm not getting any answer as to who can open it. It can't be opened on reconsideration. You can't make a regulation to open it, because it's in statute form; nobody can open it.

Ms. Wynne: Could I just ask, if I go to this board as an individual and I make my case, and then I come back in three years and want my file opened, is it not possible for me to get the file opened? Yes. So I can change my mind.

Mr. Sterling: Doesn't the legislation say "any person"? Would that not include the applicant?

Ms. Yack: It does say the file shall be sealed, but the intention is that a person can come for reconsideration, and the nature of the order would change.

Mr. Sterling: Answer me. Can you open it, or can't you?

Ms. Yack: I don't see anything that specifically says the file can be opened.

Mr. Sterling: Right.

The Chair: Satisfied?

Ms. Marla Krakower: The policy intent is to protect the identity of the individual.

The Chair: We are still waiting, of course, for the—

Mr. Sterling: The best way you could protect them, if nobody has the right to open it again, is to burn the file—don't have a record.

Mr. Jackson: Again, the privacy commissioner has not seen these. This is a simple example. I don't mean to inflame it. They would ask, "Where are these records? Who's responsible for them and how would they be protected?" That's really the simplicity of this question. We're not being argumentative. I'm just saying that I'm used to seeing legislation that says the files are to be destroyed. If that becomes the end of it, that's the end of it or whatever, but these files are sitting in limbo. That is a privacy issue.

1720

The Chair: The floor is open if anybody has any questions. Until we actually get to the amendment to the amendment to the amendment, we can certainly try to clarify any questions any of you have. Otherwise, we'll just watch each other.

Mr. Ramal: Can we have the door open? It's too hot here.

The Chair: Yes, I will give you permission to do so, if you don't mind. Open the door. We have to try to be efficient as much as possible. We don't need an employee to do it. We'll save a dollar. I think it is the internal excitement that is warming up the room.

Mr. Ramal: Thank you, Mr. Chair.

The Chair: I'm pleased I made you happy.

OK, we have the amendment in question. I would ask the mover to read it into the record so that we can deal with it. Is that you, Mr. Jackson, or is it Mr. Sterling?

Mr. Jackson: It's me.

The Chair: Mr. Jackson, you have the floor.

Mr. Jackson: I move that section 48.4 of the act, as set out in government motion number 1, be amended by adding the following subsection:

Same

"(7.1) The board may impose additional conditions that may include, but is not limited to, conditions requiring the person entitled to the adoption information to undergo counselling by a person specified by the board before the adoption information is supplied."

The Chair: Is there any debate on this amendment in front of us? Mr. Sterling, please.

Mr. Sterling: I'm trying to figure this out. Maybe you can explain it to me, Cam. The person applying to the board is asking for a veto, and so you're saying—are they rejecting the veto and saying you can—

Mr. Jackson: Under the New South Wales legislation, this provision is put in there because the board recognizes, or the registrar general in the case in Australia clearly sees, conditions where giving the information will cause significant emotional distress. The board's inclination is to give access, but in the board's opinion, in Australia, that access will create a degree of emotional harm that warrants the state's support of counselling. If the regulations—well, it won't even be in the regulations. This is a legal point. In the process of determining risk and harm—emotional, physical or sexual—there will be occasions in a ruling where they may further recommend that counselling be made available.

Since you've got three parties to this scenario, all possibly wanting information, there may be some cases where a condition of counselling may be applied before the information is given to the person seeking it. The presumption, for an adoptee, is that the birth mother or the father is seeking the child, and as such wants access to the records. They may say, "We will grant you access, but given that we have looked at your checkered past, we may wish to ensure that there be counselling associated with that." Again, if we're entrusting this panel with the authority to determine access, we should be giving them the tools to make sure it's done in a sensitive, caring manner. That's all. Clearly, in Australia, that was a condition, and a very important one.

I have one further one that I'll present that comes from this legislation. Now maybe Mr. Sterling—

The Chair: Why don't I hear from Ms. Churley, and then I'll go back to Mr. Sterling, if you don't mind. Ms. Churley, please.

Ms. Churley: Just two things: I don't object to having counselling being made available. That's something I'm concerned about in the bill. I have an amendment to deal with that, that it be available upon request. But let me point out that the legislation in New South Wales does not have a disclosure veto of any kind, unlike this bill and the amendment the government's putting forward and the amendment the Conservatives are putting forward to bring in even tougher disclosure laws, which I object to.

But I'm making the point that because there's no disclosure veto, they have some extra protection in there in terms of the information that's been provided to people, number one. Number two, I would ask members of the committee, for the dignity of the people who are with us today who are involved in this issue and are adoptees or birth parents or whatever, that we be careful in terms of how we refer to them and their pasts. I would not refer to it as a "checkered" past. I think that is derogatory—I'm sure the member didn't mean it to be—and demeaning. I would just propose that we be careful how we use language and throw language around. All the people involved on all levels of adoption have dignity, no matter what happened in their lives.

The Chair: I think we all agree with that. Mr. Parsons?

Mr. Parsons: Yes. I'm conscious of the time. I'm sure both sides want to move this through out of respect for the people who are present in the room, so I'll speak quickly.

We're not talking about children; we're talking about adults able to make adult decisions. I accept, and I believe, that some adoptees will find information they would prefer not to have found. We can think of blood relatives—and I've mentioned it before in the House—we may not be real proud of, but that's life, that's fact. I'm entitled to know it and they're entitled to know it.

I find this motion extremely paternalistic, that someone is going to make a decision as to what an individual is capable or not capable of handling. I certainly will not support the amendment.

Mr. Sterling: You don't find it paternalistic then to ask a 70-year-old woman who was given the confidence that her record wasn't going to be disclosed, to put her in front of a board and keep a secret that she was promised about an incestuous son or daughter? Ernie, you can't have it both ways.

Mr. Parsons: We're not necessarily asking her to appear in front of a board.

Mr. Sterling: Pardon?

Mr. Parsons: There may be a perception on your side that they have to appear in front of a board, but that in fact has not been defined yet.

Mr. Sterling: How do they get a disclosure veto?

Mr. Parsons: As I indicated a few minutes ago, it may be electronic, it may be by letter. The regulations have not defined that yet.

Mr. Sterling: No, but the section says you've got to go to a board.

Mr. Parsons: You may apply to a board.

The Chair: Let Mr. Sterling finish and then you may wish to—

Mr. Sterling: I thought this was a hearing that we were having. Straighten me out. Is there a disclosure veto or not? Can you just say, "I want a disclosure veto because I think I'm going to be harmed," and one will be sent out?

The Chair: OK, Mr. Sterling?

Mr. Sterling: No, I'm asking that.

The Chair: I'd be happy to allow Mr. Parsons, if he wishes, to answer those questions. It's his choice. Mr. Parsons?

Mr. Parsons: The amendment that is before us says "may apply." It does not define the method of applying at this stage. So appearing before a board or tribunal may be the route, may be one of the options, may not be an option at all. It is far too premature to say how the form of "may apply" will in fact translate into regulations. The people who will be drafting the regulations, I suggest, will do it with some sensitivity. So the perception that they must appear in front of a panel and give their story is not yet defined. It's misleading in the sense that that may be one of several options.

The Chair: Back to you, Mr. Sterling.

1730

Mr. Sterling: This is crazy. Basically, what you're saying is that you're giving them the test, which we've talked about today, that there has to be significant harm. There's discretion in that decision, so how is it decided? None of this makes sense.

Ms. Wynne: I think what Mr. Parsons is saying is that it hasn't been defined at this point what the actual process will be. "May apply" may be physically standing in front of someone or some people, or it may be a different process. I think that's what Mr. Parson's been saying.

Mr. Sterling: But I think we have the right to know as legislators. We're making some pretty serious rules here.

Ms. Wynne: My understanding is that that's what we define in regulations.

Mr. Sterling: You just want to give this all to the cabinet and their goodwill. They will decide what happens. I don't know how to read this section. What does this section mean? I thought it meant there was a board and it was going to be a closed session.

Ms. Wynne: Could we ask staff to speak to this?

The Chair: I will ask staff to speak. You're asking the questions; I heard the answers. Staff may begin to assist us.

Ms. Yack: The bill says a person may apply to the board. It also provides regulation-making power for dealing with applications and reconsiderations of orders. The person "may apply." It may be dealt with in writing; it doesn't say that someone must appear before the board in person. The process isn't addressed in the bill and can be addressed in the regulations.

Mr. Jackson: This is a legal point. These are now adults we're dealing with. Historically, if there's ambiguity—if I'm listening carefully to Mr. Parsons—we would say in legislation—I don't want to pull out all the examples—that they can apply in person or in writing, so it is now covered. If the government doesn't envisage a process that allows a person to apply in person, then I think we need to know that.

One of the disability associations contacted me. They said, "Look Cam, we've got all these crown wards put up for adoption. Somebody has to articulate this for them. Not everybody is in a position to do that." They have a right in person or in writing, but it is a legal point that if

you are going to offer a disclosure veto and then not give it to them, which is the ruling from the review board, there are some points in law that require that they be able to attend, and there are some concerns legally about the right of appeal.

We had the Attorney General state in the House today that not all these matters were able to be resourced legally from their impact on the charter, because, if I listen carefully to Mr. Parsons, some of those decisions have not been made. We don't have a legal opinion on that one aspect that Mr. Sterling is raising, and that is the right of a person—all MPPs get people coming into their offices all the time saying, "I just got rejected by the government in this letter, in one sentence." I hope to God something as important as this won't just be rejected: "Your application for privacy has been rejected," boom, bang, gone. "There's no appeal, and by the way, you don't have access to the files, the discussions, what was decided or whether the review panel was unanimous or a hung jury"—well, it can't be; it's a panel of three; that's why we came up with three.

Can we at least, then, look at "in person or in writing," and then the regulations can say it's up to the individual? Heavens. Is the government not advancing this because it sees that these are people who—the fact that the government is now accepting that there should be a form of a veto—the question is, what is its purpose? Is it to mollify somebody, or is it to in fact create a legal mechanism which allows those who are in desperate situations, or in the case of the minister herself talking about these "honour killings" of children in Ontario—her words, not mine—that there is somehow a process that won't result in a one-line letter from this review board? I want to see this thing work, but I'm having a hard time believing it can work if you don't allow them to even be in the room.

Maybe the government wants to comment. You came up with this idea to have a veto; surely you had some principles that were guiding you. What is the principle, that the individual has the right to defend their system? I have a hard time having somebody assess the emotional stress that a rape victim is going to go through in front of a panel. It's bad enough that they've got to do it, but now you're going to tell them that they'd better express it on paper? Victim impact statements are only about 12 years old in this province. That's since we created them. I know; I drafted the legislation. They're difficult.

The Chair: Maybe Mr. Sterling wants to continue.

Mr. Sterling: May I ask legal counsel—I thought that this section was setting up a process where people can apply to prohibit disclosure. I thought that's what this was. I'm hearing back that it doesn't set up a process; all it does is give a right to the government to in some way regulate or develop some kind of other process in the future.

Can you answer that for me? What does this four-page section do?

Ms. Hopkins: Each of the provisions here makes it possible for a person to apply for an order. The process of making the application is to be prescribed by regu-

lation. The process that the board uses in considering the application and reaching its decision is governed in part by some of the subsections in the motion; is governed in part by the rules of natural justice, which aren't ordinarily referred to in legislation; and in part it's governed by regulations. The Statutory Powers Procedure Act sets out in statutory form what the rules of natural justice ordinarily require. In this circumstance, the Statutory Powers Procedure Act is made inapplicable and so the rules of natural justice directly apply.

If you look at subsection 48.4(6), which is on page 21a of the motion, this is a provision that modifies the rules of natural justice in the circumstances, directing the board to take the steps required in the regulation to ensure that an interested party has an opportunity to be heard, but modifies the rules of natural justice to specify that the persons aren't entitled to be present at the same time, for example, which would otherwise be required by the Statutory Powers Procedure Act.

So what we have in these sections is an opportunity to apply for an order, the board has the capacity to make the order, there are some procedural rules that will be set out in the regulations, some procedural constraints set out in the act, and otherwise it's the rules of natural justice. It's very intricate.

Mr. Sterling: I'm saying, what of the right of the people who are making this? They don't have any right to a procedure under the Statutory Powers Procedure Act and they would have the rights of natural justice, but they are limited by subsection (6). Natural justice would say that the person has the right to appear.

1740

Ms. Hopkins: The person has a right to a procedure. The details of the procedure aren't set out in the statute. So the person has a right to make submissions and to be heard. For example, some tribunals conduct this kind of process by an exchange of documents. Others tribunals conduct this process by allowing the people to be present and to make oral submissions. Those details aren't addressed in this motion.

Mr. Sterling: But the act, as it now is written, here in front of us, does give the person a right to appear.

Ms. Hopkins: It gives the person a right to be heard.

Mr. Sterling: To be heard?

Ms. Hopkins: Yes.

Mr. Sterling: That could be by letter or it could be in person or by telephone?

Ms. Hopkins: Yes. That's ordinarily something that would be decided by the tribunal.

Mr. Jackson: If I may, Mr. Chair, then if there are lingering doubts that the regulations which will guide the tribunal say that they can only be received in writing or by tape, we would have to insert here that the options are in person, in writing or by tape or whatever.

Ms. Hopkins: Right now, the motion makes it possible for rules to be prescribed. It's also possible to set out in the statute the constraints that you would prefer.

Mr. Jackson: That's true. Because if I mention the three, then they are the only three, and that doesn't

include interpreters, so I'd have to include that. However, I'm nervous that the regulations would limit any one of those.

Ms. Hopkins: This isn't something that I can help you with. Perhaps the government members can help you with this.

Mr. Jackson: I raised the question earlier, that by amending this to indicate that if a person has the right, who is seeking a veto, to present their case in writing by tape or in person, I'm just nervous that they are only allowed to do it in writing. That's really all I care about here.

Ms. Wynne: I don't know if you are actually asking for an answer on that or you're just expressing that you think that's what the wording should be. My understanding is that the reason the wording is the way it is, is so that there is flexibility, because there may be, in different circumstances, a more appropriate method than in another circumstance. I think I've heard from that side of the table that there was a concern, on the one hand, that people would have to appear in person before a board. So that would argue that there should be alternative ways of applying for this order. I think, on balance, it's better to leave it open so that there are various ways of applying.

The Chair: Is there anybody else who wants to speak on the amendment to the motion? If there are none, I'll go back to Mr. Sterling again.

Mr. Sterling: What do we tell the people they're entitled to do? The only thing I can see that they are entitled to do is apply. That's the only thing that I see here. We don't know what that means. It appears that you've been able to put everything aside and make new rules as you go.

Ms. Wynne: If you read the first subsection, 48.4(1), "An adopted person who is at least 18 years old may apply, in accordance with the regulations, to the Child and Family Services Review Board for an order directing the registrar general not to give a birth parent the information described in subsection 48.2(1) about the adopted person." Then it goes on to say that the "person's capacity shall be determined in accordance with the regulations and using such criteria as may be prescribed."

So there's an application process, then there is the consideration and determination in accordance with regulations and criteria. It's not just the application. The application will be dealt with. That's what the legislation says.

Mr. Sterling: But you're not telling us what the procedure is. There's nothing here. There's nothing in this.

We've got a new Chairman.

The Vice-Chair (Mr. Khalil Ramal): Just for 10 minutes.

Is there any further debate on the amendment? No? So—

Interjection.

The Vice-Chair: A recorded vote. We have the amendment before us here to the main motion, section 48.4.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Vice-Chair: The motion is lost.

Mr. Jackson: Mr. Chairman, I have a further amendment, and I seek counsel's guidance as to where to put this. This is a section on advance notice. The object of this section is to provide for an advance notice system that enables the release of personal information under this act to be delayed for a fixed period to give the person requesting a delay the opportunity to prepare for the release and for any impact this might have on the person or person's family or associates.

The Vice-Chair: So we have an amendment from Mr. Jackson. Any debate on the amendment?

We can wait until it's written up and prepared for every individual person. In the meantime, does anybody have a question?

Ms. Wynne: When is it going to be written out?

Mr. Jackson: It's written out. Legal has to vet it and also make sure it's put in the right section.

The Chair: I guess we have a few minutes. Does anybody have a question or comment?

Ms. Churley: Can I make a comment?

The Vice-Chair: Yes, go ahead. We've been quiet for a while; now we have to listen to you.

Ms. Churley: The last gasp. I just wanted to point out to people as we go through these amendments that have just been written on the back of an envelope here that if you look at records across the world in other jurisdictions—Scotland, England and New South Wales are three in particular. Is it all three of those or some of them that don't even have contact vetoes?

Interjection.

Ms. Churley: All three? So there are jurisdictions within the world—as I mentioned earlier, some actually have just contact vetoes, and some, including these three, don't even have contact vetoes.

I just want to point out again that this is not reckless, ill-thought-out behaviour and legislation. Look at the people in this room here today. Some of them have worked on this issue for over 20 years and have studied other jurisdictions. We rely on them for our expert opinion as to how to craft a bill that is in everybody's interest.

I just wanted it to be said for the record that, contrary to some of the assertions from the Tory members here today—in my opinion anyway, I'm hearing that this seems to be reckless legislation that's going to cause people to jump off bridges and things. Please listen to the experts who are here, who have the knowledge and information, and look at jurisdictions across the world that have managed for many, many years to live with this kind of legislation without these horrible things taking place.

I think because there's so much focus now on this one area that's very sensational—there's no doubt about it; it will get the media—we are losing some focus in terms of what this bill is all about and the information we've been provided to come up with the best bill. There are some amendments coming up, which I'm hoping very much we can get to, that focus on some of the flaws that have been pointed out by the community so that we can fix some of the problems and improve the bill.

1750

Mr. Jackson: I just want to indicate that it was the minister who announced on Monday to the media, and not to this committee, that it was seeking amendments. I was shocked to see this. She talks about the importance of having a disclosure veto, and she goes on to say that she is "concerned that there may be cultures in Ontario that believe in 'honour killings' to seek retribution for children born out of wedlock." I think that's a serious statement. I didn't make the statement. I never once said that was an issue, but the minister apparently now goes on to say, "'I sat back and thought about that for a long time.... We can't deny that it may happen in some parts of the world or that it wouldn't happen here,' she said. 'If someone is going to be put in an extremely harmful situation then they would have that ability to be heard by the board.'" That's the minister stating this, not me.

We are labouring on a section constructed by her, which she has apparently had, according to her own statement, some time to think about. We got it yesterday. I'm anxious to get answers, and if members of the government can check with the minister about her state of mind on these matters and help us understand it, that would be extremely helpful. I'm sensing that the minister expects these people to be heard, but we're not sure. Ms. Wynne has been helpful in explaining what that might be.

The Chair: I think Mr. Parsons may wish to comment on this.

Mr. Parsons: I'd just like to express some disappointment at the lack of progress on the bill at this stage. I can think back to the late 1980s, when I was chair of a children's aid board, and this issue was being discussed then. It's been an issue for a lot of years. At that time, I actively opposed any disclosure.

I think I became an engineer because I love the concept that two plus two equals four. It's not nearly four; it's not 4.1; it's four. So I've struggled with the requirements of Legislatures to find compromises. One lesson I've learned in my experience of dealing with the public in my role as MPP is that, with few exceptions, if you give people the right information, they will do the right thing.

I am impressed with my constituents; I am impressed with the people who draft our legislation. I have every confidence that when the regulations are being put together, they will be put together to address this. That has been the history of this province, whether it be this government or other governments. I believe the people drafting it will do the right thing. I am pleased that there's provision in this bill for it to be reviewed in five years, but I also know that regulations can be changed

from time to time if there are problems, without needing to go back to the Legislature.

But for an issue that has been so long, it is impossible to find a resolution that will make everyone happy. I appreciate the members from the opposition parties. I left yesterday saying that this was, to me, a very fulfilling afternoon, because people were saying exactly what they believed. I continue to believe that, but I think there are different opinions on this matter that will probably not be resolved no matter how many amendments are put forward.

I would just like to express disappointment for those who put so much energy into it and have been with us yesterday and today. We have created across the province, I think for the first time, some hope among adoptees and birth parents, who, in significant numbers, have contacted us with the struggles that they have faced in the past. We hold the key to making so many people happy. I would like to see this bill proceed, given that all three parties have indicated support. I hope it happens soon.

The Chair: The last amendment is being photocopied at this time and will of course be the last one of the day because it's almost 6 o'clock, but until the amendment comes, I'll be happy to hear more comments. Mr. Sterling, you're next.

Mr. Sterling: Listen, we have no interest in dragging this out, but quite frankly, your bill is a piece of junk. These amendments are terrible. They haven't been thought through. You're not giving the members of the Legislature a clue about what you're going to do. Yesterday, we passed an amendment that you're going to define what a birth parent is. We don't know how wide or narrow that's going to be; you've given that over to the cabinet to decide who they're going to include in this. Basically, you're saying you can apply to a board, but we're going to decide all the parameters of what happens on the board. Your legislative counsel can't answer questions about files; they can't be opened by anyone. It's a sloppy bill, and it was given to us at 1:30 p.m. yesterday afternoon even though the government received the amendments from the NDP and the Conservatives last Thursday. So listen, look at yourself in terms of the reasons that this is going so slow. This is a terrible piece of legislation in terms of drafting, and I've been through a lot of them. Mr. Parsons, God bless you, I know your motives, but give us a break.

The Chair: Just for the record, so that there's no misunderstanding, the amendments that were presented by the three parties were delivered to all of us on Friday, but both the PC and the NDP did additional amendments, and those were the ones that we received on Monday at about 1 o'clock. So in fairness, just for the record—not that it will change any discussion. Ms. Churley, you're next.

Ms. Churley: Since we seem to be having a broad-based discussion here: Mr. Sterling, come on. Mr. Sterling is the person who has, at every step of the way, obstructed any adoption disclosure progress over the years and is continuing that process now. So we can't stop that from happening, but I do want to put on the

record that I've witnessed it before in the Legislature when the NDP was in government, under the Tony Martin bill, filibustering until midnight so it couldn't get third reading; I've witnessed it in all of my bills that have been debated in the House—

Mr. Sterling: I spoke for 15 minutes.

Ms. Churley: Yes, so that the clock ran out. So we all know what you're up to, and let's just put that on the table and be telling the truth about our motives here and we'll just get on with it, but let's not play these games.

The Chair: Mr. Jackson, would you like to read it for the record and then I guess on Monday or whenever the next meeting is, we can try to deal with it.

Mr. Jackson: I move that section 48.4 of the Vital Statistics Act, as set out in government motion 21, be amended by adding the following subsection:

“Exception

“(7.1) If the board refuses to make an order prohibiting the disclosure of the information, the board shall direct the Registrar General to delay the disclosure for the period the board considers appropriate to enable the adopted person to prepare for the disclosure and its impact on him or her and on his or her family and associates.”

The Chair: I see it's 6 o'clock. Before we start debating this amendment, I would like to recess until next Monday at 3:30 or so, where we will be picking up this amendment and hopefully the original motion with all the other amendments approved. I thank you for your understanding. Have a lovely evening.

The committee adjourned at 1800.

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Mr. Norman W. Sterling (Lanark–Carleton PC)

Also taking part / Autres participants et participantes

Ms. Susan Yack, counsel,

Ms. Marla Krakower, manager, adoptions disclosure project,
Ministry of Community and Social Services

Clerk / Greffière

Ms. Anne Stokes

Staff / Personnel

Ms. Laura Hopkins, legislative counsel



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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Monday 6 June 2005

Lundi 6 juin 2005

*The committee met at 1559 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): We were waiting for Ms. Churley to attend, and she's not here. I think, for those interested, we'll move on. If you don't mind, we'll do that.

Therefore, the order of business is Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents.

You will note that you have been given additional amendments from both the NDP and the Liberal Party. I want to make sure you know that there are those amendments. They have been numbered to place in the appropriate place in your packages.

We will resume our clause-by-clause consideration. When we adjourned, we were debating an amendment by Mr. Jackson. Mr. Jackson, I'll give you the floor, or I will open for any additional comments on your motion.

Mr. Cameron Jackson (Burlington): First of all, which page number specifically was it?

The Chair: We were dealing with 21(j).

Mr. Jackson: Mr. Chairman, I wonder if it's possible if we could get a brief briefing on these amendments. If I'm getting this correctly, I'm looking at 21(k), (l), (l), (l), (l)—I'm not sure how we're supposed to follow this. I'm looking at these for the first time.

Here's my problem. This is unprecedented, so it's hard for me to know, when I'm working on one section that may have impact on another section, the intent of which is covered in these, I'm sure, 30-some pages of additional amendments. So I wonder if it's possible to get a brief briefing on where these amendments sit and what they're about.

I don't want to ask for a recess while I read them, but I just walked into the room, and they're here, which is fair. There are reasons for that, and I'm not questioning that. I'm just questioning about—on a go-forward basis, I

have to be in a position to understand these in order to contribute, and I don't want to be putting forward an amendment that offends something else that I'm unaware of. I'm in an awkward position here, Mr. Chairman, and I'm asking for your assistance on how to better understand this.

The Chair: I'll be happy. If I understand correctly, we are dealing with yours, which is 21(j), but there are two additional amendments on this section, which are 21(k) and 21(l). What I will do is ask staff, if possible, to explain. Normally, I would ask the member to explain, but maybe staff can give us a summary of what those two amendments will do so Mr. Jackson will have a better appreciation. Then we'll go back to Mr. Jackson's amendment. Would that be OK?

The Clerk of the Committee (Ms. Anne Stokes): I can explain simply that we have received these amendments in addition to the package we already had. There are two new amendments from the NDP and a number of new amendments from the Liberal Party, some of which are replacing the amendments in your package. There are, I believe, two new ones. In terms of what they set out to do, I would suggest perhaps the PA or ministry staff could outline that.

The Chair: Both amendments in this section are from the government. Mr. Parsons, do you wish to give us just an appreciation of those two? Nothing to the discussion, because I think we should discuss them as they come up. Would you please?

Mr. Ernie Parsons (Prince Edward-Hastings): I'm fully prepared to have the staff do it.

The Chair: OK. Would the staff, then, please? First of all, introduce yourself for the record. Then the only thing I want from you, if I may, is a brief appreciation of 21(k) and 21(l). OK? Thank you. The floor is yours.

Ms. Marla Krakower: I'm Marla Krakower. The new government amendments—the proposal—would create an automatic prohibition against disclosure to birth parents until it can be determined that the birth parent did not actually abuse the adoptee. This amendment would apply only to crown ward adoptees.

The process that would be followed, which is outlined also in the draft amendment, is that when a birth parent approaches the registrar general asking for identifying information, before the registrar general would actually provide any information to the birth parent with respect to the adoptee, there would be a request of the custodian

of information, which is also outlined in another section of the bill, to do a check of the records. That custodian would check which children's aid society, if any, the adoptee was adopted from. The children's aid society would then do a check of the files to determine whether there was abuse of the adoptee when he or she was a child. "Abuse" would be defined in the regulation.

If there was a determination of abuse, then the custodian would notify the registrar general not to give information to the birth parent. Birth parents would be able to request an appeal of the decision to the Child and Family Services Board. In addition, an adoptee could waive the prohibition if he or she so chooses.

Mr. Jackson: If I have the right page, is that replacement motion number 8? Is that the one that you were speaking to?

Ms. Krakower: I'm actually referring to the government motions, the new ones that are being tabled as a whole, what the policy intent is overall.

Mr. Jackson: They're not paged. It says "replacement motion number 8." Is that the one that you were referring to?

Ms. Laura Hopkins: I think we're talking about motion 21(l), which adds new sections, 48.4.4 and 48.4.5.

Ms. Kathleen O. Wynne (Don Valley West): Because there is a lot of paper in the replacement motions, I'm just wondering if staff could go through 21 and tell us which pages come in which order, because we have it in a number of forms. If you could do that, that would be helpful, so we'd know what is on each of those pages in 21.

The Chair: It's 21(j), (k), (l).

Ms. Wynne: Well, there's a and b—I just think we need some clarity on what's in 21.

The Chair: Can staff assist us, please?

Clerk of the Committee: I might be able to help you there. The original motion is pages 21(a) through (d). That motion has been amended by 21(e) and 21(f).

Mr. Jackson: I don't have a 21(e), for starters.

Clerk of the Committee: It was distributed last week. I can get you a copy of 21(e) and (f). If you remember, it added the "significant harm" part.

On the floor we have Mr. Jackson's motion 21(j), to amend that. In addition, we have government motions 21(k) and (l), which have not yet been moved. There are additional motions in that package that was received today.

The Chair: So what we have is a motion which has already been amended, and we are continuing with the amendments.

There are three additional amendments that we have to address here today, and the first one is page 21(j), which is Mr. Jackson's motion, which we debated to some degree last Tuesday. We will continue any time we're ready. What I thought we should have done is to get a flavour of what 21(k) and (l) meant. I think we did that. If there are no more questions, I'll go back to you, Mr. Jackson.

Mr. Norman W. Sterling (Lanark-Carleton): Which one?

The Chair: We are dealing with 21(j) right now.

Mr. Jackson: No, we're not—21(j) is my amendment. I'm still trying to understand what amendments are in front of me, and I want this on the record. I have amendments in several different locations now. Does the clerk have a bundled package?

Clerk of the Committee: I have not incorporated the new amendments into the original package. I just received them this afternoon myself. The page numbers are intended to indicate where they would be fit in.

Mr. Jackson: Mr. Chairman, I request a 15-minute recess so we can get the amendments in front of us in the proper order. I've never had this happen to me before. You've been very good, Mr. Chairman, but even before I try to understand it, I'm having a hard time finding all these pieces of paper, because we've had four different tablings of amendments to this bill. Today is the fourth. I have another one that I'm tabling today that's almost finished, and I apologize for that, but could I request that, so I can have the complete set in front of me and can follow it properly?

The Chair: You asked for 15 minutes and I'm going to give you 15 minutes, but Ms. Churley wants to speak. Can I hear her comments, and then I'll—

Mr. Jackson: Sure.

Ms. Marilyn Churley (Toronto-Danforth): Instead of taking a 15-minute recess—after all, we end at 6 o'clock today—while we sit here, with everything in front of us, can we go through it with the clerk and make sure we have all our amendments in order? They're all numbered. I think that should only take a few minutes, if everybody would agree to that. We could do that right here and now.

The Chair: Mr. Jackson, do you still want 15 minutes, or would five minutes do the job for you?

Ms. Churley: Let's just do it here instead of having a break. Let's go through it and make sure we all have it in order.

The Chair: Mr. Jackson made a request. It's my understanding that the Chair must abide by anyone making a request. Therefore, unless he's satisfied, I'm going to give him 15 minutes.

Mr. Jackson: I'm worried that it's going to take longer if we try to do it as a committee. I'm probably the only one confused here. I don't have all of them in front of me. I'm in your hands, Mr. Chairman.

The Chair: If you're in my hands, I'd be happy to ask Anne to take us through these pages. Would you do that right now, please?

Clerk of the Committee: Do you want me to start with page 1?

The Chair: Should we start with 21(j) and then go to (k) and (l)? That's what I'd like to do. That's the central idea of it. Would that be OK, Mr. Jackson, since you made the request?

Motion 21(j): Where do we find it?

Clerk of the Committee: Motion 21(j) was distributed last week during the meeting on Tuesday.

The Chair: And it's page 21(j) in our old books.

Clerk of the Committee: It's 21(j).

The Chair: Does anybody have a problem finding 21(j)? If there is, we can get copies to you.

Mr. Sterling: I don't have 21(j).

The Chair: Can we have a couple of extra copies?

The Clerk of the Committee: Is there anybody else missing page 21(j)?

The Chair: So only one page is missing, 21(j). Does anybody else need it? No one. Why don't you give my copy to Mr. Sterling and we're fine?

The Clerk of the Committee: Then you don't have a copy.

The Chair: Oh, I don't have it. So then Mr. Sterling is quite correct, isn't he?

Mr. Sterling: That's why I think it's easier just to get them all copied.

The Chair: We've solved the problem. So we dealt with 21(j).

Now is anybody missing 21(k)? Mr. Sterling are you OK with 21(k)?

Mr. Sterling: Yes.

The Chair: How about 21(l)? Is anybody missing 21(l)?

Mr. Sterling: Bingo.

The Chair: Sorry. Did you say you're OK, Mr. Sterling?

Mr. Sterling: I said "Bingo."

The Chair: How about my good friend Mr. Jackson? Does he have it?

Mr. Jackson: I'm going to call a 10-minute recess right now. This is ridiculous.

The Chair: A 10-minute recess.

The committee recessed from 1612 to 1627.

The Chair: If we can all have a seat, we will take another crack at 21(j).

Mr. Jackson, the floor is back to you on 21(j), please.

Mr. Jackson: As I indicated last week, this is a provision that I found in the legislation from New South Wales. Because of the manner in which their legislation is set up, there is unwanted disclosure of a serious nature. There was a response to that, obviously, by suggesting that there must be a certain amount of lead time. Since there's no appeal mechanism, this would provide a reasonable period of delay before the information is provided to the requesting party.

I've talked with one family who have indicated that they want time to change their name and to move, to change their phone number and a few things of that nature. This was a lady who had been sexually assaulted. I object to the notion that this individual finds herself potentially in this situation with the legislation, unless it's amended, but at least this acknowledges that people need time to make major changes or to notify members of their family of a pending disclosure.

Mr. Parsons: The amendment—not this one, but the philosophy that we're putting forward today is that if the

birth parent goes before a tribunal on this specific type of case, it's not that they have to justify that they won't do anything in the future; they have to prove that they didn't do anything in the past. I suspect the tribunal will be very good—not suspect; I absolutely believe they will be.

However, if there are instances where they do overrule, I think this is a good amendment. We're certainly prepared to support it, but we would like to add more amendments, because if we're going to give one side some time to get their affairs in order, we believe that the same thing should apply to the other side, whether it's a birth parent or whether it's an adoptee. I don't know if we have it with us, but we would like to support this with parallel legislation that goes the other way so that both parties have the same rights.

The Chair: Ms. Wynne and then Mr. Sterling.

Ms. Wynne: I believe that staff has some material that would show how we could do that balance. I'm just wondering if that would be helpful. We want to agree with this, but there's a counterpart to it. Could we have that circulated? Would that be OK, Mr. Jackson?

Mr. Jackson: Sure.

Ms. Krakower: I can just add that in this particular amendment 21(j), this is in a situation where the adoptee has gone forward to the CFSRB to try to obtain an order prohibiting disclosure and the board has made a decision not to provide an order that there be a delay in releasing the information. The complementary amendments that the government would introduce are just in a situation now where the birth parent is going before the board and has asked for an order prohibiting disclosure and the board has made a decision not to make an order that there be a delay in the information being disclosed the opposite way to the adoptee.

The Chair: Mr. Sterling.

Mr. Sterling: When we were asking last week about the process, we were saying, "What is this? Is it a tribunal? Is it one person?" In fact, I put forward a motion which was voted down that there be at least three people. The answer back was that there hadn't been a decision made with regard to what the nature of this board was going to be. There was some talk about an electronic thing, and there was an exchange, some talk about a written process etc.

Am I now to assume that within these amendments you're nailing this down to a tribunal?

Mr. Parsons: I used the wrong word. There will be a process for making the decision, whether it be an individual or whether it be a tribunal, and I've taken the easy route, which is to say "tribunal." But no, there's still a need to establish the appropriate way to present, and it may be more than one way, so the tribunal was an example only.

Mr. Sterling: The trouble I'm having with this amendment that Mr. Jackson is putting forward is that the person pleading the case would say, "I need a disclosure veto," and then there would be a response back which would probably say to the person, "I don't think you're going to get that." Then they might respond back and

say, "Well, will you give me some time so that I can deal with that decision?" That's the purpose of this particular amendment. It's hard to put these in context when you're trying to figure out whether or not the amendment has any real effect.

The other part is, in terms of Mr. Jackson's amendment, is that the form you want it in or are we going to see another form which is preferable to you and covers both sides?

Mr. Parsons: What we have prepared is a mirror image of this one that reflects it the other way, so that whether it be the adoptee or the birth parent who is told that their information is going to be disclosed, they will both be entitled to some time, that the information will not be disclosed that afternoon or the following day.

We think Mr. Jackson's suggestion that they need some time to deal with it emotionally or to deal with some physical things has great rationale to it, but we're going to add a mirror amendment that simply reflects the other side.

Mr. Jackson: Is that being drafted now so that we can deal with it?

Ms. Krakower: The amendments have been drafted, and they can be distributed now.

Mr. Jackson: They're not in the package that was tabled; this is on top of that?

Ms. Krakower: That's right.

Mr. Jackson: Are there any others besides this one?

Ms. Krakower: Not that I'm aware of.

The Chair: Can we have those copies then? Any other comments?

Mr. Sterling: I'd like to see the amendment.

Mr. Jackson: Can I ask a legal question, Mr. Chairman?

The Chair: Yes.

Mr. Jackson: I put the wording in here, "the board shall direct." Is that sufficiently clear?

Mr. Sterling: I find the word "shall" difficult. Presumably you're giving the board a discretion to either give time or decide how much time they give, and I would imagine it might vary from applicant to applicant. Is that your intent or is your intent to say, "You're entitled to 30 days," or "You're entitled to 60 days," before the effective decision takes place?

Ms. Lynn MacDonald: Mr. Chair, my name is Lynn MacDonald. I'm the assistant deputy minister for community and social services.

Mr. Sterling, the intent is to require the board to allow for a delay in this circumstance but not to dictate what the delay would be. What might be reasonable in the circumstances would presumably be taken into account by the board.

I'm not a lawyer; I'm sorry, I didn't give you legal advice on that.

Mr. Sterling: Perhaps legal counsel would want to help.

The Chair: Can you?

Ms. Hopkins: We're just numbering this.

Mr. Jackson: I intended it to be "shall." I just want to make it clear to everybody that in all cases where someone has been turned down, they have the right to have a delay. I don't think we need to be as prescriptive as to say that it should be three months or whatever; I'm satisfied that the right is there and that the board will act judiciously and we'll create a regulation along those lines. I just want to make sure everybody's aware this is an automatic right the way I wrote it. If your wishes are not acceded to by the board, that should give you an automatic right to a reasonable period of delay, that's all. It's automatic when it's "shall."

The Chair: They are coding these papers to make sure there's no confusion. Does anybody else wish to answer or comment while we're waiting for the next numberings?

Is there any other discussion? If there's none, I'll be happy to take a vote on this amendment. Are there any more comments on 21(j)? If there are no comments, we'll take a vote.

Mr. Jackson: I'm ready for the vote.

The Chair: Mr. Sterling, you have the floor.

Mr. Sterling: This is a very confused process, so let's not pass something that we're going to have to come back to. I thought we were going to try to mirror this one with the government one. So what's the mirror?

Mr. Jackson: It's being drafted now. They're going to bring it over to me, and we're going to pass that next. We'll get this one done first, and then we'll move to the second one.

Mr. Sterling: Get which one done first?

The Chair: Motion 21(j), which was introduced last Tuesday.

Mr. Sterling: That's not the one that the government wants.

Mr. Jackson: The government—

The Chair: Excuse me. I am the Chair, and I have this on the floor. That's the one I can consider. If you want to amend it, you can, but the only one in front of me right now is 21(j).

Mr. Parsons: The 21(j) that we want to vote on, though, is intimately tied to another number of amendments. Our approval of 21(j) is contingent on the others passing, and I suspect it is for you also, that you want them as a package. I'm wondering if we could ask the clerk to make copies and distribute them before we vote.

Mr. Sterling: That's what I wanted.

Mr. Parsons: We don't do it easy.

Clerk of the Committee: We're working on 21(j). I've received a 21(j.1) from Mr. Jackson just now, and it has been distributed. I now have four new motions from the government: pages 8(b), 15(b), 21(j.2) and 21(j.3); I believe all or some of those are complementary to what we're discussing now. I'm going to have them copied and distributed.

The Chair: We'll wait until you've distributed them, and then we'll see what else we have to do.

The committee recessed from 1639 to 1646.

The Chair: I believe staff have provided the material we need. Therefore, I open the floor again for any comments on the item that we're dealing with, which is 21(j). I suspect there may be some amendments. The floor is open for any comments. Anyone?

Mr. Sterling: Could Mr. Parsons take us through this?

The Chair: Mr. Parsons, do you wish to assist?

Mr. Parsons: We have 21(j) that we're about to vote on. What we will be moving subsequent to that is 21(j.2), which basically gives the same process for delay to adoptive parents and, following that, 21(j.3) that gives the same rights for a delay in disclosure to birth parents.

The Chair: Thank you.

Can somebody let Ms. Churley know that we are in session? Thanks.

Mr. Jackson: So 21(j.2) is identical to 21(j)?

The Chair: Mr. Parsons, do you agree with that?

Mr. Parsons: Except that 21(j.2) and 21(j.3) are complementary to 21(j). There's 21(j.1) in between that has already been tabled. That is a separate one that is, I believe, Mr. Jackson's motion.

Mr. Jackson: So why is this in section 6? Because 48.4.2, 48.4.1—

Ms. Hopkins: I can help with that.

The Chair: Yes, staff can assist, please.

Ms. Hopkins: I can help with that. That's because it's an error.

The Chair: Thank you. It's nice to know.

Mr. Jackson: What should it be?

Ms. Hopkins: It should be section 8 of the bill.

Mr. Jackson: OK. Mine is 7.1; correct? So now we have the Liberals—

Ms. Wynne: Mr. Chair, I'm just wondering if we could all have this explanation, because actually we all have the same paper that Mr. Jackson has. So could we all have that explanation, please?

The Chair: OK. And of course we all have to adjust our motion, I suspect. So would you tell us what—

Ms. Wynne: I've got that this is an amendment to section 8 of the bill, "Exception (7.1)," and then on the new motion, it says "(6)". Could I have an explanation of that?

Ms. Hopkins: Mr. Jackson's motion, which is 21(j), makes an amendment to section 48.4 of the Vital Statistics Act. The motion numbered 21(j.2) makes an analogous amendment to section 48.4.1 of the Vital Statistics Act.

Mr. Khalil Ramal (London-Fanshawe): Which one is the correct number?

Ms. Hopkins: They're both correct. The underlying motion creates three kinds of orders. One order prohibits disclosure in order to protect an adopted person, the second order prohibits disclosure in order to protect a sibling of the adopted person and the third order is intended to protect the birth parent.

Mr. Jackson's motion makes an amendment in relation to the order that protects the adopted person—that's 21(j)—the motion 21(j.2) makes an amendment to the provision dealing with the order to protect the sibling,

and the amendment numbered 21(j.3) makes an analogous change to the provision dealing with the order to protect the birth parent. It's an analogous amendment dealing with three separate orders; that's why there are three separate motions.

Mr. Sterling: So we have three: One is (j), one is (j.2) and one is (j.3).

Ms. Hopkins: That's right.

Mr. Sterling: And what is (j.1)?

The Chair: Mr. Jackson's motion.

Mr. Sterling: Yes, I realize that, but how does—

Ms. Hopkins: Motion (j.1) is a completely independent motion. It was just tabled with the committee in between.

Mr. Jackson: Yes, (j1). I'll speak to that in a minute.

The Chair: Those are all independent motions, so I'm assuming that we can deal, for instance, with the first one, 21(j)—we can take a vote on that—and then deal with the others. So what I have been saying can proceed at this point. Are there any more comments on 21(j) only? None? Therefore, I'm ready to call for the motion.

All those in favour of the amendment? Carries. Everybody supports it; 21(j) carries.

May I have the mover for 21(j.2)?

Mr. Parsons: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4.1 of the Vital Statistics Act, after subsection 48.4.1(5):

"Exception

"(6) If the board refuses to make an order prohibiting the disclosure of the information, the board shall direct the registrar general to delay the disclosure for the period the board considers appropriate to enable the adoptive parent to prepare for the disclosure and its impact on the adopted person's sibling and on his or her family and associates."

The Chair: Any comments?

Mr. Jackson: Again, because I'm not familiar with the other amendments you're tabling—I raised the question last week of how someone knows that they were the victim of an abuse, sexual, physical or emotional. How would the person know that? I've discussed the one with the adopted person; this is now the sibling, the progeny—in the worst-case scenario, an incestuous relationship. How, under the amendments you've tabled, are we going to be able to notify the individual on their 18th birthday that they were in fact a victim of abuse or sexual assault?

Mr. Parsons: Under other amendments, which we'll deal with today, the intention is that an individual who's a crown ward—realizing that most adopted people are crown wards—who has been brought into the protection of a CAS because of abuse, will have a caution registered against their birth record.

Mr. Jackson: Right.

Mr. Parsons: So they will have automatic protection against disclosure. They can choose to waive that, but they will have protection.

The birth parent could ask for a hearing, or whatever process is, decided, to have that overturned, and if that

were the case, the individual is informed that their history is one that spoke of abuse and that there has been a caution raised there.

Mr. Jackson: So just quickly, the onus is on the registrar general to flag the file?

Mr. Parsons: The CAS, at the time the child comes into care and then moves on to adoption, will have flagged the file, and the registrar general will then be aware of that, that there's a need to contact the CAS regarding this particular individual and the information is not automatically given out.

Mr. Jackson: I guess I'm asking you to comment on your future amendments. So you're going to give them an automatic right for a disclosure veto, but that can be appealed?

Mr. Parsons: Yes. The adoptee himself or herself could choose to waive that right or the individual seeking the information, the birth parent, could appeal to acquire the right to that information.

Mr. Jackson: So the crown ward can appeal to say, "Look, I want my information disclosed."

Mr. Parsons: Doesn't have to appeal; just says, "I want my information—"

Mr. Jackson: Fair enough. So they just have to notify the registrar that, "I waive any non-disclosure veto."

Mr. Parsons: Right. Exactly.

Mr. Sterling: In terms of that amendment that you're going to propose, as I understand it then, that if the adoptee would request the birth parents' identity, is he then going to be asked, "Do you really want this? Because there is some abuse indicated in your background." How are they going to handle it?

Mr. Parsons: The intention is that it go the other way, that when the birth parent would go to access the information, it would not be readily available to them—

Mr. Sterling: I understand the block there., but the block shouldn't be there for the adoptee necessarily.

Mr. Parsons: The adoptee would be told of the history, and they then have the option of saying no or yes.

Mr. Sterling: Before the disclosure?

Mr. Parsons: Before the disclosure, right.

Mr. Sterling: Is there any other amendment in our package that we haven't discussed yet vis-à-vis a woman who has been sexually assaulted and the adoptee applies? Is there any look at CAS records or the court's orders with respect to the fact that this woman was sexually assaulted and therefore there is a veto that she is entitled to?

Mr. Parsons: No.

Mr. Sterling: So you're doing it one way but not the other?

Mr. Parsons: That's correct.

Ms. MacDonald: Mr. Chair, if I may help Mr. Sterling. The other avenue, of course, does exist that was written into the bill in the first place, which was the indication that if an individual, including the birth parent, felt that harm might result to them, they could apply to the Child and Family Services Review Board for a

prohibition in that instance. So if the woman had been sexually assaulted and had reason to fear that she might be in future, by release of the records, that's something she could take to the CFSRB.

The Chair: Mr. Parsons, and then I'll go to Mr. Jackson.

Mr. Parsons: If the adoptee is the result of incest or is the result of sexual assault from the parent, that doesn't make them a second-class person with fewer rights. The information they find may not be as pretty as they hoped it would be, but we believe they still have the right. Certainly the birth mother doesn't pose any threat to them, nor they to her.

1700

It comes back to the basic premise that we support, which is that they have the right to the information. There are numbers of individuals in this province who are children resulting from incest, but they didn't go through an adoption process. Just because that is their background, it doesn't diminish their rights compared to a child who was voluntarily placed for adoption. We don't believe there's a need to put a barrier there; there's not a risk to either party if contact were made.

Mr. Sterling: I understand that. I guess I'm just saying that a woman who has gone through that perhaps deserves more than one who hasn't gone through it. I'm trying to recognize a woman who would obviously have gone through much more emotional impact at the time than someone who had chosen to put up their child for adoption.

Mr. Parsons: If I look back on my personal experience with fostering, we've never fostered a child whose parents didn't love them. They may not have had the right parenting skills or behaved appropriately, but that doesn't mean they didn't love them. I believe that in this case, even given the difficult background, there is still love to go between the two parties.

Ms. Churley: I think you all know my views on this, but I'll reiterate them briefly. It is a reality; I'm not dismissing this, but isn't it sad that in this day and age, for the women we're talking about who were sexually assaulted, there's still so much shame associated with something that they had no control over? Lifting the veil of that secrecy and shame would be a good thing for all, while I recognize that for some people, unfortunately, that shame and the need to hide something that was done to them is still there.

Having said that, I would say that every adult adoptee has the right to their own information, and that if we're going to do this, it is wrong to discriminate against those few—yes, a minority of adult adoptees—because of the circumstances of their birth. That is what we'd be doing here: creating a tragedy out of another tragedy. Somebody who was born under these circumstances, relinquished in adoption—and we've heard from many adoptees, and we have heard from birth mothers who bore children out of those circumstances who wanted the information and the contact. We have heard from letters,

and from personal stories as well, the reverse. I would say again, that's why there is a contact veto.

Right now, let's be clear about this: Adoption orders prior to 1969 had the birth mother's full name on the adoption order. Perhaps it was different in private adoptions, but in CAS adoptions, adoptive parents would have had the birth mother's full name. The adoptive parents of most of the so-called children we're talking about—55 years old to 60, depending on the age of the mother—would have had access to that name. As well, these adoptees would have the same access to the so-called non-identifying information that one can get from CAS, which is what I got and which was how I found my son.

These kinds of searches are going on all the time, and some adult adoptees who were children of rape victims have gone ahead and used that information to locate their birth mothers, and vice versa. Some birth mothers have located their children from those tragic circumstances, and they tell stories of healing. But there are some, I know, who do not want the contact.

What would happen with this bill with a contact veto in there is that those few, that small minority, whose rights we do care about, will be more protected under this bill. There is a revolution in people finding each other now. We have to accept that as the reality, because it is happening. So this contact veto would in fact take care and deal with that concern about making an unwanted contact, but would at the same time allow the adult adoptee his or her right, just like every other adoptee, to get their own personal information.

Mr. Sterling: I just want to be clear about the contact veto that is there. I've asked legislative counsel this question, and her interpretation is what I'm going to say. She can correct me, if not. I understand that if a contact veto is asked for by the birth mother, that contact veto is between her and the adoptee. Although the penalties, I think, would never be instituted because of the nature of the relationship, notwithstanding that, the sanction is against the adoptee to contact the birth mother. The adoptee has no sanction against contacting the other children of the birth mother. They have every right to phone up their half-brothers or full brothers of the birth mother.

I hope everybody understands that, that it doesn't in any way protect the birth mother from the rest of the family, who may or may not have been told about this, from being contacted and the knowledge becoming quite commonplace in the family—aunts, uncles, whatever.

I think there's a lot of talk about how this contact veto is going to save harmless the relationships of a family, but that's bogus because basically the adoptee would want to, I think, contact their other siblings, whether they were half-brothers, half-sisters or whatever.

That's my understanding of it, Mr. Parsons: The contact is only between the adoptee and the birth parent who registers that contact veto.

Mr. Parsons: Mr. Sterling's right, and I quite frankly support it. It is, I think, a dark period, if we go back into

history in Ontario, where families were split up and adopted out into a number of homes because it is somewhat of a challenge to find an adoptive home that can adopt three, four or five children. As an aside, the bill that was introduced today in the Legislature will help to make that happen.

I think it's a great thing that the siblings will be able to get together. I don't view it as a liability; I view it as a good thing—their brothers and their sisters. The birth parent may not wish, but I'm not aware of a sibling being unhappy about being contacted by a brother or sister—quite the opposite, in fact. I strongly support the ability of someone to contact a sibling.

Mr. Sterling: That's the purpose of this whole exercise, but you cannot deny that it's going to upset the birth parent significantly if she wanted to keep her family unit as it was. So we're not giving her any real protection in terms of the contact veto.

The Chair: Can I go back to Mr. Jackson, unless Mr. Parsons wants to answer? Mr. Jackson, then Mr. Ramal.

Mr. Ramal: I just want to follow up.

The Chair: OK. Then Mr. Ramal. Thank you.

1710

Mr. Ramal: I want to know how we can protect the birth mother and allow the adoptee to see the siblings and make connection with them without knowing about the birth parents.

Mr. Sterling: I don't think you can. In reality, how could you do it?

The other question I have here is: As I understand it, the records that an adoptee would be entitled to see, according to the legislation as we have it here, are the registration and what the registrar general has; there is no right in this legislation for the adoptee to see CAS files or the court documents where the adoption order was made. If that is the case, then how is the adoptee, who was obviously wanting to find out something about his birth mom, and he now knows who that is, and the only route to the father is through the mother—as I understand it, in 75% of the cases the father's name will not appear. So the whole idea of trying to prevent, if she filed the non-contact notice—aren't those two very counter-prevailing kinds of urges that are going to take place? She's going to say, "I don't want contact," and the adoptee is going to say, "The only way I can find out who my father is is through the natural mother." Is that not right?

Mr. Parsons: I think that's right. But the CAS files have a much different legal status than the birth registration or the adoption order, and contain, at times, speculation. They may contain individuals who phoned and made an allegation and believed they were entitled to privacy. If there is not a birth father's name on the birth registry but the information is given out through the CAS files, it makes it very difficult for the birth father to have filed a no-contact when they don't know they've been identified as the birth father. There are individuals who are not aware that that name has been put down. There are not the same rigorous standards for the files as there are for the birth registry; they're more anecdotal at times.

Mr. Jackson: That's the area that concerns me the most, Mr. Parsons, and it's the one I'm having difficulty with, because I fundamentally believe that an adoptee who has been removed from an abusive family situation—the mother's and the father's names, the birth parents, are there in most cases.

Mr. Parsons: Not necessarily. It may be the two individuals who were responsible for the care, but it may not necessarily be the birth father.

Mr. Jackson: Yes. We know there's a considerable amount of abuse from family and friends—an uncle and persons like that. I understand all that. But one of the defining features of an atypical file is that in cases where the child was abused by one or both parents, that would be contained in the CAS file and not necessarily detailed in the registrar's files. I raised this question last week as a matter of concern.

How does that individual know that they were removed from their parents because they were physically abused or sexually assaulted? I don't want to go off into the other ones like incest, which are a lot easier to understand and put in context. I just want to focus on an 18-year-old woman who doesn't know she was adopted until her 16th birthday, and now they've got to get over the next hurdle and tell her, "When I took you in as your new mother, you had 12 broken bones"—that kind of thing. I'm still not clear in my mind how we tell that individual—mind you, you did say earlier that you have made amendments from the packages last week that that individual now has an automatic right to a veto, and the abusive parent or parents have to appeal to the tribunal, which is essentially the amendments. I wouldn't give them any right of appeal, but that's a separate issue.

How does that individual get to know? Now I'm worried, Mr. Parsons: The CAS has a flag with the registrar, and the registrar now has that knowledge. How do we impart that to an 18-year-old woman who has just come of age, according to your regulation, if in fact you're going to hold on to the regulation that they have one year between their 18th and 19th birthdays to apply for the veto? I assume you're still holding on to that piece. Try to understand this part.

The Chair: Before you answer, I see Ms. Churley. Do you want to enter into the discussion, or should I get an answer?

Ms. Churley: This may help. If I understand your question, in the bill we have before us there is a problem. If this is what you're getting at, I have an amendment to deal with it, and I think the government does; I'm not sure whether you do or not. That's something we do have to cover, because as this bill stands right now, it repeals the right of adult adoptees and birth relatives to access that information under the CAS, which is a major problem. As we've already pointed out, the original birth registration and information doesn't normally include the father's birth name. In fact, it's excluded.

Although a lot of this information—names and things—has traditionally been blacked out, it is the information that gives a lot of the background. You're giving

one right, which is to get the original birth information, and taking away the other right, which would be a disaster in terms of searching and adoptees finding out more about themselves in their search. That is a very valid and good point that we can hopefully address later in an amendment.

The Chair: Ms. MacDonald, would you like to add something to this?

Ms. MacDonald: I hope I can. I'm going to try to speak to two aspects of this. Mr. Sterling will recall that if the father is not named on the original birth registration, then the person who comes along and says, "I am the dad, and I want my child's record," will not be given that record by the ORG—I'm just looking for a correction from the ORG people back there.

The second point: How would the adoptee know they had been abused? Let us presume that the adoptive family has not informed the child. In this bill, the birth parent, who might be the abuser, is not able to access the child's record until the child becomes an adult anyway. The default position will be that if there is a record of abuse, which is checked through the CAS and the custodian, the parent can't get it, because there will be a prohibition on the file.

When the child comes of age, under the government's motion to amend, they themselves, when they applied for their record, would see that there was a flag on the file. They would be referred to the custodian, and the custodian would then say, "You were adopted from"—let's pick one—"the Halton CAS, and we advise that you go to the Halton CAS to have a conversation with them about the circumstances of your adoption." That would be the means by which the individual would have sufficient information to determine whether or not they wished either to continue with the prohibition in place or to instruct that there be a waiver of the prohibition on the record. I hope that helps with your question.

Mr. Sterling: I very strongly support the government's amendment on this, because it essentially is stronger than a disclosure veto. It's an automatic veto.

Mr. Jackson: Which is what we've tabled as our amendment.

Mr. Sterling: The child doesn't need to know to apply to the board for a disclosure veto because the veto is already on the record. It would only be in cases where it wasn't on the record at the CAS.

Mr. Jackson: However, part of that is to block the adult adoptee's access to their CAS records, and that's a whole other issue that I would hope we're able to—I've checked with the privacy commissioner. Their opinion is that they are a party to the agreement and should have access to the files. I hope we are going to allow them to have a look at their files. I know the difference between what's anecdotal, but we are dealing with serious issues around child welfare. It's a pretty substantive decision when a child is extricated from a family against the parents' will, which are the cases that concern me the most, as opposed to those who just simply say, "I don't want my child any longer." They are a little different from the ones that are concerning me the most here.

1720

The Chair: Is there any further debate on 21(j.2)? If there is no further debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Now we go to the next one, which is 21(j.3).

Mr. Parsons: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4.2 of the Vital Statistics Act, after subsection 48.4.2(5):

“Exception

“(6) If the board refuses to make an order prohibiting disclosure of the uncertified copies, the board shall direct the registrar general to delay the disclosure for the period the board considers appropriate to enable the birth parent to prepare for the disclosure and its impact on him or her and on his or her family and associates.”

The Chair: Is there any debate on this motion? If there is no debate, I will now put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

The next one is 21(j.1).

Mr. Jackson: I move that government motion 21, as amended, be further amended by adding the following subsection to section 48.4 of the Vital Statistics Act after subsection 48.4(7):

“Same

“(7.1) The order shall be presumed to be appropriate if the board is satisfied that the adopted person has been a victim of sexual assault, attempted sexual assault, violence or abuse or has suffered other emotional and physical harm.”

The Chair: Any debate on this amendment?

Mr. Parsons: This may well be the appropriate wording to go in the regulation, but we don't believe it should be restricted as such and we prefer that regulations develop the criteria at that time.

Mr. Jackson: The reason I drafted this is because of the two occasions I raised the Victims' Bill of Rights in Ontario on the floor of the Legislature. The government has, for whatever reason, chosen not to respond. There are two sections of the act that deal with the rights of victims of a crime. A child, regardless of whether or not they have full legal status under the age of 18, is still a victim nonetheless. They are victims their entire life. Anybody who knows anything about rape survivors or incest survivors knows that these individuals carry that for the rest of their lives.

One of the things that offended me in one of the second- or third-round amendments that were tabled was the notion that the board only has to look at future harm and the potential for future harm. This disrupts a principle that is now entrenched in our laws. It was specifically put in there for women. It has an application for men, but disproportionately it's an issue for women, that they should not have to be re-victimized, nor should they have to live their lives in a fashion that puts them in harm's way as a result of opportunities to reconstruct contact.

I've had lawyers check this out. I'm going to quote from the act: “Victims should be treated with courtesy, compassion and respect for their personal dignity and privacy by justice system officials.” There is no question in my mind. There is that section, and then the other section that was drafted in the original bill is the issue of civil proceedings on presumption: “The following victims shall be presumed to have suffered emotional distress.” The presumption there is that they carry that for the rest of their lives and shouldn't have to go before a tribunal to prove that.

I'm not prepared to leave this outside in the hope the regulations will cover it. In fact, I'm trying to put the bill in a position that it might sustain a challenge. I honestly believe we're putting the bill's future at risk if we don't put that in.

I want to make it clear that there is a presumption that a veto is appropriate for a board when the abusive parent comes looking for their child if they are victims of sexual assault, attempted sexual assault, violence or abuse, or have suffered other emotional and physical harm, that this includes their experience as a child and isn't necessarily limited to the future potential harm that may occur. Even the media is picking up on this issue now, finally. I don't want to prejudge the minister, but I'm sure the minister—even though two newspapers have reported it—is not suggesting that the only cases are this sort of honour murdering that might occur for children who were born in a manner that is deeply disturbing to some cultural groups, the way she stylized it.

I don't think that general veto that was put in a week ago by the government goes far enough because the presumption in the minister's responses was that it's only in the future.

I don't want to lose the ground we've gained, especially for the victims' rights movement and the women's movement, in particular, in this area of law. When I've checked with various lawyers, this section will cover that. If a woman is not receiving the counselling that is required to get her through this, she carries this scar the rest of her life. I just firmly believe that should be made clear to the board, that they're obligated to respect the wishes of a victim that there be no disclosure if they have the least bit of concern with the fact that they were the victims of these various attacks on them.

That's why this was drafted and why legal counsel have analyzed it over the weekend with respect to the sections of the Victims' Bill of Rights, which this legislation, in its current form, is offending.

The silence of the Attorney General over the last two weeks since I raised it causes me even greater concern.

Mr. Sterling: I think this covers off the exception where in the CAS file there is not a record of the abuse. If the board is satisfied that there has been sexual abuse with other evidence, then I think Mr. Jackson's amendment takes into account that particular kind of case. I would strongly urge the government to support this amendment.

The Chair: Any further debate?

Mr. Jackson: Recorded vote.

The Chair: On a recorded vote, shall the motion carry?

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Parsons, Ramal, Wynne.

The Chair: The motion does not carry. I believe that will take care of all of section 8. I'm sorry, there are two more. Back to you, Mr. Parsons, for 21(k).

Mr. Parsons: I move that government motion 21 (replacing section 8 of the bill), as amended, be further amended by adding the following subsection to section 48.4.3 of the Vital Statistics Act after subsection 43.4.3(5):

"Access to board's own file

"(5.1) The board file respecting the application for the order under section 48.4, 48.4.1 or 48.4.2, as the case may be, is unsealed for the purposes of this section."

1730

The Chair: Any debate?

Mr. Sterling: Why are we doing it?

The Chair: Mr. Parsons, do you want to make any comments, please?

Mr. Parsons: There was a question, I think, from Mr. Sterling last week and once again we said, "You're right."

Ms. Krakower: This is in a case where the board is reconsidering a decision allowing the documents to be unsealed.

The Chair: You got the answer, I believe.

Mr. Sterling: No. Basically, it goes with the other section, which says that no person may open the file.

Mr. Parsons: Right.

Mr. Sterling: Is that section still there or is it coupled with it, or does it do away with that section?

The Chair: Staff?

Ms. Krakower: I'm not sure. This is in a situation where the board would want to reopen the file when a person is coming forward to either ask that the board reconsider that they remove the order prohibiting disclosure or when the other party is asking to be heard. This would allow the board to actually open up the file and see on what basis the decision was made initially.

Mr. Parsons: The section is still there, but this provides an exemption in case of an appeal.

Mr. Sterling: Can I ask legislative counsel, shouldn't there be any "notwithstanding" the other section?

Ms. Hopkins: No, it doesn't need to.

Mr. Sterling: OK. That's fine.

The Chair: Any further debate? I shall now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Parsons, 21(l), please.

Mr. Parsons: I move that government motion number 21 (replacing section 8 of the bill), as amended, be

further amended by adding the following sections to the Vital Statistics Act after section 48.4.3:

"Prohibition against disclosure where adopted person a victim of abuse

"Definitions

"48.4.4(1) In this section,

"'children's aid society' means a society as defined in subsection 3(1) of the Child and Family Services Act;

"'designated custodian' means a person designated under subsection 162.1(1) of the Child and Family Services Act to act as a custodian of information that relates to adoptions.

"Request by registrar general

"(2) Upon receiving an application under subsection 48.2(1) from a birth parent of an adopted person, the registrar general shall ask a designated custodian to notify him or her whether, by virtue of this section, the registrar general is prohibited from giving the information described in subsection 48.2(1) to the birth parent.

"Exception

"(3) Subsection (2) does not apply if a notice of waiver has been registered by the adopted person under subsection 48.4.5(1) and is in effect.

"Determination re method of adoption

"(4) The designated custodian shall determine whether the adopted person was placed for adoption by a children's aid society.

"Request for determination by local director

"(5) If the adopted person was placed for adoption by a children's aid society, the designated custodian shall ask the local director of the society to make a determination under subsection (7) and to give written notice of the determination to the designated custodian.

"Notice to registrar general

"(6) If the adopted person was not placed for adoption by a children's aid society, the designated custodian shall give written notice to the registrar general that the registrar general is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Determination by local director

"(7) Upon the request of the designated custodian, the local director shall determine whether, in his or her opinion, based upon information in the files of the children's aid society, the adopted person was a victim of abuse by the birth parent.

"Same

"(8) The determination must be made in accordance with the regulations.

"Notice to registrar general, no abuse

"(9) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was not a victim of abuse by the birth parent, the designated custodian shall give written notice to the registrar general that the registrar general is not prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

"Same, abuse

“(10) If the local director notifies the designated custodian that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the designated custodian shall give written notice to the registrar general that the registrar general is prohibited, by virtue of this section, from giving the information described in subsection 48.2(1) to the birth parent.

“Application for reconsideration

“(11) The birth parent may apply to the Child and Family Services Review Board in accordance with the regulations for reconsideration of the determination made by the local director.”

Ms. Wynne: I’m going to read the rest.

The Chair: Yes, proceed. It’s a long one.

Ms. Wynne: “Reconsideration

“(12) The board may substitute its judgment for that of the local director and may affirm the determination made by the local director or rescind it.

“Same

“(13) The board shall ensure that the local director has an opportunity to be heard.

“Procedural matters, etc.

“(14) Subsections 48.4(4), (10) and (11) apply, with necessary modifications, with respect to the application for reconsideration.

“Notice to registrar general

“(15) If the board rescinds the determination made by the local director, the board shall notify the designated custodian that, in the opinion of the board, the adopted person was not a victim of abuse by the birth parent, and the designated custodian shall give written notice to the registrar general that the previous notice to the registrar general is rescinded.

“Information for birth parent, adopted person

“(16) If the local director determines that, in his or her opinion, the adopted person was a victim of abuse by the birth parent, the local director shall, upon request, give the birth parent or the adopted person the information that the local director considered in making the determination, with the exception of information about persons other than the birth parent or the adopted person, as the case may be.

“Administration

“(17) Subsections 2(2) to (4) do not apply to notices given to the registrar general under this section.

“Notice of waiver by adopted person

“48.4.5(1) Upon application, an adopted person who is at least 18 years old may register a notice that he or she waives the protection of any prohibition under section 48.4.4. against giving the information described in subsection 48.2(1) to his or her birth parent.

“Same

“(2) A notice described in subsection (1) shall not be registered until the applicant produces evidence satisfactory to the registrar general of the applicant’s age.

“When notice is in effect

“(3) A notice is registered and in effect when the registrar general has matched it with the original registration, if any, of the adopted person’s birth or, if there is

no original registration, when the registrar general has matched it with the registered adoption order.

“Withdrawal of notice

“(4) Upon application, the adopted person may withdraw the notice.

“When withdrawal takes effect

“(5) If a notice is withdrawn, the notice ceases to be in effect when the registrar general has matched the application for withdrawal with the notice itself.

“Administration

“(6) Subsections 2(2) to (4) do not apply to notices registered under this section.”

The Chair: Any debate?

Mr. Sterling: Do you have any idea how many files this would apply to?

Mr. Parsons: I don’t. Ms. MacDonald?

Ms. MacDonald: As of this morning’s statistics, it said that 16% of total adoptions are through private adoptions, so the balance would apply to all CAS adoptions. As of quarter three of the 2004-05 fiscal year, there were 98 domestic adoptions in Ontario and 515 CAS public adoptions.

Mr. Sterling: This section deals with kids that have been abused. Can you give me any kind of thumbnail? I’m not going to hold you to the number, but I’d like to have some kind of estimate.

Ms. Krakower: What I can tell you is that based on the experience of other jurisdictions in Canada, the majority—about 80%—of the applicants looking for identifying information are adoptees, leaving about 20% as birth parents. Of that 20%, I would imagine that the number of actual cases where there’s abuse would be relatively small, but I don’t have a figure.

Mr. Sterling: I guess the question is that you can look for the answer the other way, and that is, of the CAS adoptions, how many involved abusive parents as opposed to other situations? Do you have any idea, Ernie?

Mr. Parsons: I’m going to give you a best guess. I think the percentage of CAS children placed for adoption that have had some violence in their background is increasing, not because there are more parents doing the abuse, but there are more birth mothers choosing to raise their child or to do private adoptions. If I go back 26 or 27 years ago, there were significant numbers of people who gave their child for adoption through the CAS. There was no history of problems, no problem at all. But now I think the percentage that have been brought into care for their own protection is probably slightly increasing every year as a percentage of children placed for adoption.

1740

Mr. Sterling: I’m still trying to get the number. I hear there are 500 to 600 adoptions a year, maybe 700. How many of those would involve CAS cases where there would have been abuse of the children?

Mr. Parsons: I couldn’t guess that.

Ms. MacDonald: I did ask that question this morning, Mr Sterling, of my colleagues at the Ministry of Children

and Youth Services, and they were unable to give me an answer on the spot. They said they would have to go back and do a file crawl of all of the adoptions in CYS. I'm sorry.

Mr. Jackson: I have some questions about this amendment, but could you not sort of take a medium-sized CAS and ask them to do that exercise, so that you've at least got a ratio within that? I guess what we're getting at here is how much work is going to be involved in terms of flagging the files, and then there's going to be a huge rush of adoptees who are 18 and older who are going to be immediately eligible under this section. We're just trying to get a sense—if we're dealing with thousands of individuals here, then those files will all have to be reviewed individually?

Ms. MacDonald: I'm going to ask to my colleague Ms. Krakower to add, but in the motion to amend that the government has introduced, we are proposing to proceed on the basis of the application by the birth parent, so that would trigger the assessment of the case. It wouldn't be all 250 sealed paper files and all the electronic files up front. It would be upon the application of the birth parent that the exploration with the CAS would trigger.

Marla, do you want to add anything?

Ms. Krakower: That's exactly what I was going to say. It's going to be done on a case-by-case basis, as birth parents apply for the identifying information.

Mr. Jackson: OK. Well, it makes sense to me that you're going to do it that way, but I'm still not 100% sure how they're going to know that they're a subject of an application. You're not envisaging notifying the adult adoptee that their parent is seeking disclosure?

Ms. Krakower: No. However, when the adult adoptee would come forward, if they came forward with a request for identifying information about the birth parent, at that point there would be a flag.

Mr. Jackson: This sounds pretty benign, but at what point does the adult adoptee figure out that nobody's seeking out information on her? Is that how she realizes that she might have been a case of abuse?

Ms. Krakower: I think the adult adoptee would—I'm not sure what you're getting at.

Mr. Jackson: The adult adoptee—no one is notifying her that she was abused as a three-year-old?

Ms. Krakower: If the adult adoptee goes forward requesting their identifying information—

Mr. Jackson: Then they're told.

Ms. Krakower:—from the ORG, at that point they're told that there's a prohibition on their file with respect to their birth parents.

Mr. Jackson: But then they can look at their file.

Ms. Krakower: And then they would be able to go and retrieve some information from their file from the CAS with respect to the basis on which the decision was made to put the prohibition on the file.

Mr. Jackson: OK. Could you tell me who you consider to be a "designated custodian" in subsection (2)?

Ms. Krakower: The designated custodian is referred to in other sections of the bill. Do you want me to speak to that?

Mr. Jackson: I just want to be reminded who we're talking about here.

Ms. Krakower: The designated custodian is a body that would be responsible for collecting, disclosing and using information with respect to adoptions. The details of who that body would be will be outlined in regulation.

Mr. Jackson: So this is separate from your current department, which is being phased out?

Ms. Krakower: Yes.

Mr. Jackson: Remind me again why we're phasing out your department.

Ms. Krakower: One of the primary functions of the adoption disclosure unit is to conduct searches.

Mr. Jackson: Right.

Ms. Krakower: With this bill, the adult adoptees and birth parents will be able to apply to the ORG for their identifying information and, with that information, they will be able to seek each other out.

Mr. Jackson: What kind of department are we going to be left with being the designated custodian of these—what are they the designated custodian of?

Ms. Krakower: The main purpose of the designated custodian is to fulfill some of the functions that have been provided with respect to the provision of non-identifying information, in particular in relation to private adoptions.

Mr. Jackson: OK. So we're really talking about civil servants here?

Ms. Krakower: Not necessarily.

Mr. Jackson: No? Would you farm this out? Would you contract somebody to do it?

Ms. MacDonald: If I may.

Mr. Jackson: The deputy minister's going to come in here and fix this.

Ms. MacDonald: You just promoted me.

Mr. Jackson: Assistant deputy minister, sorry.

Ms. MacDonald: Thank you, sir. I thought I'd gotten a promotion there, but I suddenly lost it again.

Mr. Jackson: Take the compliment.

Ms. MacDonald: It is intended that the custodian could be a government body. It could be an administrative authority of government, such as the many administrative authorities that exist, for example, within the general ambit of the Ministry of Consumer and Business Services or it could be some other kind of corporate body that would be created by the government. The intent is that that body would collect, use and disclose information, collect and disclose non-identifying information for adoptees, birth parents and possibly other birth kin. That could include court documents, family history information collected at the time of adoption, home reports conducted by a CAS social worker, etc.

So it could be quite a broad base of information. Much of that information or similar information does exist within the adoptions disclosure unit within community and social services now. Other information might be

added to that, and we do have an amendment to allow the custodian to also conduct searches similar to the kind of searches conducted within the ADR right now.

Mr. Jackson: I'm trying to understand why you'd be collapsing one instead of refashioning it. There are five or six known reasons why governments do that: One option is, of course, so that you can create a new fee-charging regimen; another is to secure highly sensitive documents to save any potential liability; or another is to thin the ranks of the civil service. I don't find all three very appetizing, to be honest with you.

OK. So this designated custodian is now the one who would inform the birth parent that they will not have access, and they'll also be the person to tell the adoptee who applies—

Ms. MacDonald: No, sir. The custodian would obtain the information from the CAS as to whether there had been abuse in the case involved. The custodian would then instruct the Office of the Registrar General to not release the record and the Office of the Registrar General would decline to release the record and advise the person that there had been a denial to release.

Mr. Jackson: In subsection (12), "The board may substitute its judgment for that of the local director"—so we're talking the CAS here—"and may affirm the determination made by the local director or rescind it." Why would you allow the board to override the local director if he is satisfied that there was abuse?

1750

Ms. Krakower: This refers to an instance where there has been a determination by the CAS, based on looking at the files, that there is abuse and the ORG is informed that the prohibition should remain, but the birth parent, upon trying to access information, decides that they want to apply to the child and family services board for a reconsideration. At that point, when they apply for a reconsideration, if the board has a look at the file and determines that in fact the birth parent is correct and there was no instance of abuse, based on the file, then their decision to take the prohibition off would substitute the original decision by the children's aid society.

Mr. Jackson: Then, in paragraph 13, you give the right to the local director to have an opportunity to be heard. You've now questioned his or her professional judgment. That's because you've reviewed his decision, as a board.

Ms. Krakower: I don't interpret it that way. I'd interpret it as their having an opportunity to explain on what basis they made that determination initially.

Mr. Jackson: It doesn't say what the board's obligation is to the director. It just says they will give the local director an opportunity to be heard, which means he gets to defend his decision. That's a professional courtesy in government, and it's understandable, which brings me to, where do we allow the adult adoptee to have the same right?

Ms. Krakower: This gets back to the situation that if the adult adoptee were part of this proceeding, it would defeat the purpose of having the prohibition on dis-

closure, because in that case their identity would be revealed. That's the reason for not having the adoptee as a party to this proceeding.

Mr. Jackson: I understand that. You've got a director from the CAS saying, "Look, we believe there was a prima facie case of abuse." You now have the board second-guessing it and saying, "Do you know what? We don't think so. We've looked at the file, and we disagree." You allow the director to come in. All this is triggered because the birth mother or birth father says they want access to the records. Now I'm at that point with you, and you're at that point with me. How do you now tell the adult adoptee that the veto that was there is about to be removed? What happens now?

Ms. Krakower: In that case, if the adoptee feels that they would be harmed by having the information disclosed, they can then apply to the Child and Family Services Review Board for an order prohibiting disclosure, based on a perception that they would be harmed.

Mr. Jackson: Next question: In (15), why do we say "birth parent"? Is that presumed to include both parents?

Ms. Krakower: Only in a situation where there's evidence that both parents were involved in the abuse.

Mr. Jackson: Does "birth parent" in this section mean both the mother and the father?

Ms. Krakower: Not necessarily.

Mr. Jackson: That's why it tripped in my mind—I've got to ask some questions. So abuse can occur from either parent, correct?

Ms. Krakower: It could.

Mr. Jackson: The CAS, in the files that I'm aware of, would actually indicate that there was negligence on the part of the mother, who failed to protect the child. That appears in files. When you talk to women survivors, they will tell you their resentment was as much at their mother for not protecting them as at the father who attacked them.

I need to understand, before I approve this, how we're covering off any and all situations, and I'm not comfortable with that wording.

Ms. Krakower: The definition of "abuse" will be dealt with in regulation.

Mr. Jackson: I'm not comfortable with that either. According to a literal reading of this, it's "was not a victim of abuse by the birth parent."

Ms. Krakower: Right.

Mr. Jackson: I'm just asking you if that includes both parents or one parent.

Ms. Krakower: Well, it would depend on which parent was applying for information from the ORG. That would be the parent to whom this would apply.

Mr. Jackson: OK. So now it's possible for the mother to apply but not the father?

Ms. Krakower: That's right.

Mr. Jackson: The mother is applying because she wasn't the subject of the abuse. Maybe she was the subject of negligence, but we'll leave that aside for the moment. Is it possible, under these amendments, that the

application from the mother would be allowed to go forward because of the Catch-22 that she wasn't actually the perpetrator?

Ms. Krakower: She wasn't the perpetrator, but it was the birth father who was the perpetrator? I guess I'd go back to my comment that the definition of "abuse" will be fleshed out further in regulation.

Mr. Jackson: I'm really having a hard time with that. I'd rather it be a lot clearer here that the adult adoptee who is given the right in this section to have a disclosure veto have the right to say, "I'm willing to be contacted by my mother or my father separately or independently," as opposed to the mother coming in and winning her argument in front of the board by saying, "Look, I was just an innocent bystander. I had no idea that my husband was doing this to my daughter." I'm very uncomfortable with that. I still want the adult adoptee to be empowered with the determination as to whether or not they're exposed. The way this is worded, they're not protected in that way.

Ms. Krakower: At any point, the adult adoptee can waive the prohibition and allow for that disclosure of information to the birth parents.

Mr. Jackson: No, not from what—if I'm listening to you carefully, there's a clear difference between how the board would look at an application from an abusive father and a non-charged abusive mother, but the child was nonetheless removed from the family—the mother may have been guilty of negligence. I'm very uncomfortable with that wording. But if you're saying that it was written specifically not to limit access for the non-offending mother, if we keep with my analogy here, I'm having trouble with that.

The Chair: Can I get somebody else involved in this discussion?

Mr. Jackson: Sure. I just need some comfort here, because I don't think that's what we intend here.

The Chair: Ms. Wynne, were you going to suggest something to Mr. Jackson?

Ms. Wynne: Actually, I'm just looking at the clock. I have a sort of procedural matter that needs to be dealt with. Is Mr. Jackson going to continue? Sorry, I'm just not sure.

The Chair: There is a motion on the floor, and Mr. Jackson has the floor. I would like to address that motion before I take any other motion.

Ms. Wynne: OK. I just wanted to raise the issue with the committee that I do have a procedural issue regarding a document that was released to us, and I do have a motion. I'd like to have a chance to move that today, if possible.

The Chair: Mr. Jackson has the floor.

Mr. Jackson: Can staff confirm that this is a partial disclosure veto when it involves two parents?

Ms. Krakower: It's not a disclosure veto. This is a prohibition against disclosure where an adopted person was a victim of abuse.

Mr. Jackson: I understand that, but you're saying that the board can come in and say to the CAS, "In spite of

your advice, we think we should release the information. We should waive this for the adult adoptee and say, 'Sorry, but we're going to release it to the mother. We're just not going to give it to the man she's living with'?"

Ms. Krakower: I think that some of this will be dealt with in regulation, if it's getting at the definition of "abuse." We are planning to consult extensively on the regulation, including a regulation that would pertain to this section.

Mr. Jackson: It's not the definition of "abuse" that I'm having difficulty with; that isn't going to be very hard to craft. I'm having difficulty with the fact that both parents have lost this child for good reason in the cases we're discussing, and I'm anxious to make sure that there is a right for the victim here, the adult adoptee, to be protected from disclosure to either of the parties.

Again, it's only from listening to women who have said, "That was my dad." I'm not rationalizing it, but the real resentment was with the mother who didn't protect her. You're familiar with this concept.

I'm really having a hard time with this section. We're running out of time for me to amend it, but we're not going to pass this whole section in case I wanted to do an amendment to it.

Ms. Krakower: This section is intended to address a situation of abuse, not something else, not a parent who stood by; it's to specifically address a situation where a birth parent was a perpetrator of abuse.

Mr. Jackson: Again, I've asked you that question: There are two parents, and one was the abuser according to the records. This allows the board to rescind the advice, the professional judgment of the CAS, in order to make—the purpose, now that you've explained it, is in the event that they want to say no. We'll continue to bar the father, the perpetrator, but we'll leave his wife, the birth mother; she'll have access to the information. It is possible, where they're both living together, that one will have the information and the other won't. That's my point.

I'm really, really uncomfortable with that. I very much appreciate that the government has made a major move here for something I've been calling for for months, but I am a little nervous. This is the only section in here now that is causing me some grief, because it's possible that you're going to tell the mother but not the father.

Ms. Krakower: I think, again, some of this will be fleshed out in the regulation. I don't have anything further to add.

Mr. Jackson: I'll check with legal counsel, because we're not going to close off this section, and it might be the subject of a further amendment.

The Chair: I thank you, Mr. Jackson. I think Ms. Wynne wants to say something.

Ms. Wynne: I understand, Mr. Chair, that I can't move a motion as there's a motion on the floor, but I just wanted to raise an issue. There was a document that was released to the committee, and we all received a memo, I believe, on May 30. It was a document that was released through the Attorney General's office, dated December

10. That document was released in error. I'm looking for consent around the table that that document not become part of the committee's record and that it not be part of the committee's file. Is that agreeable?

The Chair: Do I have unanimous consent on that?

Mr. Jackson: No. I won't give you unanimous consent to that. There's a motion on the floor. Unless you want to adjourn and we'll come back tomorrow and we'll continue.

Ms. Wynne: I'll raise the issue next time, then.

The Chair: Mr. Jackson is correct. There is a motion on the floor that we should address. That was more information. It has been requested by the clerk that she get direction on what to do. There is not unanimous support, which means that you don't have that direction.

It is after 6. I will adjourn today's meeting, and we'll come back to the same room tomorrow about the same time to continue on the same section. I thank you all for your participation. We'll see you tomorrow.

The committee adjourned at 1805.

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Also taking part / Autres participants et participantes

Ms. Lynn MacDonald, assistant deputy minister,
social policy development division, Ministry of Community and Social Services

Ms. Marla Krakower, manager, adoptions disclosure project,
Ministry of Community and Social Services

Clerk / Greffière

Ms. Anne Stokes

Staff / Personnel

Ms. Laura Hopkins, legislative counsel



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Mardi 7 juin 2005

**Standing committee on
social policy**

**Comité permanent de
la politique sociale**

Adoption Information
Disclosure Act, 2005

Loi de 2005 sur la divulgation de
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Tuesday 7 June 2005

Mardi 7 juin 2005

*The committee met at 1542 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): Good afternoon and welcome again today. We will be discussing Bill 183. We will resume our clause-by-clause consideration.

Yesterday we adjourned while debating the government amendment on page 211. Is there any debate on the motion, Ms. Wynne or Mr. Parsons? None. Is there any debate on the motion from anyone?

Mr. Cameron Jackson (Burlington): I have a technical question. What's the status of government motion 21, which is 21, 21a, b, c and d?

The Clerk of the Committee (Ms. Anne Stokes): It's the main motion at the moment. The motion we're debating is an amendment to that motion. It's been amended already, so it's an amendment to the motion, as amended.

Mr. Jackson: But 21 says sections 48.4 to 48.4.3, so this one becomes the addition to—

The Chair: That's right.

Mr. Jackson: I was contacted last night by a group of concerned persons who are also affected by the legislation who were questioning—I'm trying to look for the reference in either of the two sections that deal with the words "crown ward" anywhere. Is there any reference in that? Am I not seeing this correctly?

Ms. Laura Hopkins: No. The expression "crown ward" isn't used, and "ward of the crown" isn't used. I believe the expression that's used is "adopted person placed for adoption by a children's aid society."

Mr. Jackson: OK. That is in both 21e or 21l, whichever that is. Is it stated in there specifically, as well as in 21?

Ms. Hopkins: I don't think it's referred to in 21.

Mr. Jackson: Where is it exactly?

Ms. Hopkins: In motion 21l, if you look at the first subsection on the second page, which is subsection (4), it

refers to "adopted person was placed for adoption by a children's aid society." The next subsection also refers to that. The next subsection refers to "adopted person" who "was not placed for adoption by a children's aid society."

Mr. Jackson: OK. Let me ask this question on subsection (7). This is what these families were asking me about. Why do we say "was a victim of abuse by the birth parent"? Are we going to be eliminating all or any cases where someone has been put up for adoption and taken away from their birth parents or parent, but where the abuser might have been a live-in boyfriend or a known acquaintance and the mother refused to separate herself from the acquaintance? There's still the issue of abuse here.

What has been brought to my attention is that the definition of "abuse" specifically refers to physical abuse. I'd like to ask the question why we're not considering other aspects of childhood trauma that include, to use an example given to me, a one-year-old girl whose birth father is a violent drug addict listed on the sex offender registry. He may not have physically assaulted his own child but was deemed to be a threat to children by others. In that case, according to this amendment, that child would not be protected as an adult adoptee.

Another example that was shared with me was that of a three-year-old boy who witnessed his birth mom stabbing the birth father 15 times. Again, I get back to the issue: At what point do we let the child know that that's what they experienced in their trauma? More importantly, I would take it from these amendments that those children are not captured in the legislation. Could I perhaps get an answer to that?

The Chair: I can ask staff to respond. Ms. Churley, can I get an answer first, or do you wish to—

Ms. Marilyn Churley (Toronto-Danforth): You can get an answer first.

The Chair: Can staff respond, please?

Ms. Marla Krakower: Similarly to what we were saying yesterday, the definition of "abuse" is something that would be covered in regulation and would be fleshed out in consultation with stakeholders. At this point, we don't have a definition of "abuse." Your question is: Would there be any way of defining that somebody who witnessed violence between two parents was abused? Perhaps. Perhaps there would be emotional abuse.

Mr. Jackson: I'm still asking the point as to whether or not they're captured in this amendment, because it

refers to victims of "abuse by the birth parent," as opposed to children who were found to be in need of protection.

Ms. Krakower: You're correct that the whole group of crown wards is not covered under this amendment. It is a subsection of that group of crown wards: the ones who would have experienced abuse.

Mr. Jackson: You're aware that I have an amendment that covers all crown wards?

Ms. Krakower: Yes.

Mr. Jackson: And your position is that crown wards don't need that protection? That's the way you've drafted it.

Mr. Ernie Parsons (Prince Edward-Hastings): For children's aid societies, not all but almost all children become crown wards. They become crown wards when they fall under the care of the CAS and are then placed for adoption. They may become crown wards because the birth mother chose to voluntarily place them into care. The phrase "crown ward" does not imply that they automatically need protection; far from it. The concern is not, I believe, children who were crown wards but children who were victims of abuse or who witnessed abuse or whatever. We don't support "crown ward," because it is too broad.

Mr. Jackson: I'm going to be amending it so that it covers what I think I just heard you say, which is crown wards who were found to be in need of protection. That would be included in their file. When I listened carefully to the answers to my questions—I got quite a few of them answered satisfactorily, so I thank you for that—we're now asking the director of a children's aid society to go into that file to make an evaluative decision in terms of whether they were in need of protection from a set of circumstances and from individuals who may or may not be their birth parents.

1550

Mr. Parsons: But there are children who have been placed for adoption by CASs that never became crown wards.

Mr. Jackson: Fair enough, and that's a challenge we can—

The Chair: Can I get Ms. Churley in on the discussion, please?

Ms. Churley: First of all—Mr. Parsons dealt with the first part—as a birth mother who was forced to sign away my child and give the child away and relinquish all contact with that child, I have, and perhaps you won't take this personally, some distaste for a conversation that includes me and the majority of other young mothers who, by no choice of our own, and for many reasons, did the best thing for our children, being lumped in with child abusers.

Mr. Parsons: I hope that's what I said.

Ms. Churley: Yes, you did, and I appreciate that. I'm just getting tired of hearing that over and over again. I understand, Mr. Jackson, what you're trying to do here, but let's be careful, because that's the way the system worked. The majority of those of us who gave up our

children had no choice but to sign them over and relinquish our parentage over these children. But we were not abusers; in fact, we gave them up in love.

Having said that, the second piece is around trying to protect children who were taken because of potential or real abusive situations. I think that they're good questions, but I also think you can only go so far in trying to protect adults. We're talking about adults here. Mr. Jackson, when you mention things like—it makes me cringe—the mother may have stood by and allowed some abuse to happen, and that therefore the adult adoptee may be resentful because there's some evidence that the mother stood by and watched this happen—she may have been abused herself. There are all kinds of circumstances that we don't know about that happen in families and that we really don't have control over, but that is also true of "normal" families—I put that in quotations—biological families. The things that we know are quite devastating. The things we don't know that children have to endure within their birth families can be just horrendous at times.

At the end of the day, we're talking about adults who have to make some choices for themselves about what they want to know and what they need to know. I also have to contend that in many, many cases, if you read reports of adults who have found birth parents and have found circumstances that may have happened to them that they didn't know about but they've had problems in their lives because of deeply buried memories or whatever, it can be very healing. Adult adoptees have to make those kinds of choices at some point in their lives, but we can only go so far in terms of protecting each and every aspect of adults who were removed as children from perhaps abusive situations.

The Chair: Is there any further debate on the motion?

Mr. Jackson: I yielded in order to listen to the contributions.

I don't want to protract this by engaging in a debate, but Ms. Churley's compelling arguments give rise to the issue as to why only one jurisdiction on the planet actually does it this way. I'm not for a moment suggesting that this is an easy piece of legislation and that it can have simplistic solutions. I share that view about amendments that are all-encompassing. I have to make decisions as a legislator in terms of those groups of individuals who've contacted me who have concerns.

I'm just trying to write up what the impact would be if we amend subsection (7) so that, based upon information in the files of the children's aid society, the adopted person was found to be in need of protection. That would cover abuse. I can't imagine a case of a children's aid society taking a child out of a sexual abuse situation and not making them a crown ward first.

Mr. Parsons: There are children who are brought into the care of a CAS in need of protection, but the need of protection may be "unable to parent;" they're not abusive, but they're unable to parent. Or there used to be a phrase called "failure to thrive," which is pretty general. I would suggest that where families have, in years past,

had great financial difficulties—I suspect that if we go back in history, there were children removed because families were unable to afford them. I would believe that those individuals, as adults, would not be at risk to have contact with the birth parents. It was not a wilful act, as such, and so I would not support that amendment because I think it is too generic and doesn't recognize all of the reasons that children came into the care of a CAS.

Ms. Churley: I just want to make two quick points—

The Acting Chair (Jeff Leal): Mr. Jackson, were you finished?

Mr. Jackson: I don't want to jump to an amendment until we've discussed it, and I think that's fair if we do that in the process.

The Acting Chair: Ms. Churley, please, then.

Ms. Churley: Just two quick points. The first, as I've pointed out many times, as have members of the adoption community—Mr. Jackson, you've been involved in this issue for a long time, so I'm sure you're aware of it as well. If you look at other jurisdictions, you're talking specifically about Canada, the provinces, that also have disclosure vetoes as well as contact vetoes, but as I've pointed out before, England, Scotland, New South Wales and some American states have just contact vetoes; some have no-contact vetoes or disclosure vetoes. So to point out again, it's not like we're reinventing the wheel here and these things haven't happened.

The second point I wanted to make was—I didn't write it down and I forget it. So there you go. But that was one of the key things I wanted to say. Oh, I know what it was: Yesterday I went to the announcement by the children's minister; Mr. Parsons was there as well. There was a young man there who had been just recently adopted, but he was very open about the fact that his mother is schizophrenic, and there have been a lot of issues and problems and she cannot care for him—that relates to what you were saying, Mr. Parsons—and he understands that and knows that. He loves his mother and he wanted to make sure, when he was adopted, as opposed to just being in foster homes, that he would be allowed to have contact with that mother, to always know that she's OK and to allow her to know that he's OK. I just wanted to point out once again—and I think, Mr. Jackson, you too alluded to it—that these can be very complex and difficult situations, and we have to be careful not to box ourselves in to the extent that people like that don't have the kind of access that they may need in their lives on either side.

I'm not disagreeing that we have to try to protect people, but we have to look at all angles and all sides to this.

Mr. Jackson: The initial concern I had was that crown wards who were in need of protection, for a broad range of issues, should have a disclosure veto. The government has decided, and I appreciate the fact that there's significant movement on the part of the government, to consider the position put forward by our caucus. However, what was tabled yesterday talks about a fairly subjective process with a third party, herein referred to as

the designated custodian, who is presumed to have access to records which identify an adoptee and who then is required to contact the children's aid society and ask one of its senior people to review the file to determine if this individual was a victim of abuse and that that abuse, according to the regulations, is sufficient to uphold the bar on the access to the disclosure.

So we already have a process that is highly subjective and regulatory. I'm merely introducing to the committee the notion that, in its current form, it's too narrow to catch some children who will be adult adoptees at the time they'll be approached who, in my opinion and that of my caucus, should have this veto right or at least the opportunity to have a third party review it to concur that they need some protection.

1600

Do I think that the children's aid society is going to review a file, two examples of which Ms. Churley just shared with us? No, I don't think so. I think that one will be waved right through. I think they'll just simply say, "There's no bar on this." But I'm worried that we're going to have gaps in this thing because we don't have a broadly enough defined definition in legislation. As someone who has sat at the cabinet table, as Ms. Churley has—the regulations can't deviate from the legislation. They have to uphold what's stated here.

The families who contacted me last night gave very compelling testimony about the cases. I have many more. I think the committee gets it. There's nothing served by my going over dozens of cases or examples that aren't hypothetical; they're specific ones. I had one late in the day yesterday. One of the reasons I'm going to change (7) is because the records of a CAS for a woman I talked to was that her foster parent abused her. That sits at the seat of one of the major concerns we have in the province, that CASs will be liable for some of these issues at some point down the road. We hope that there isn't a lot of litigation that occurs from access to these reports. Having said that, clearly that woman came to me last night and said, "I'm not covered under this legislation, because my foster parent sexually abused me." They're not covered under this, I don't believe.

I'm getting a look. Please—

Ms. Lynn MacDonald: I'm not sure that this addresses directly where you're going—

Mr. Jackson: It says "by the birth parent" in subsection (7).

Ms. MacDonald: The foster parent would not have a right of access to the birth records of the adoptee by virtue of this legislation. So if the foster parent were the abuser, the foster parent would not be able to access the records. The foster parent was not named on the birth registration as the father—or it could have been a mother foster parent, obviously.

Mr. Jackson: Right.

Ms. MacDonald: So they have no access, by right, to the records of the adoptee under this bill.

Mr. Jackson: Right. But since 1960, that foster parent would have known who the birth parent was.

The Chair: You want to assist us, Mr. Parsons?

Mr. Parsons: I'm a little bit confused in that that example has nothing to do with this bill. A foster parent abusing is horrendous, but it's no different than if it were a teacher or a neighbour. This bill is dealing with the disclosure of information. Foster parents have no right to access the information. They may be aware of the name of the birth parent. As a foster parent, quite frankly, it's handy to know, sometimes, if you're going to bump into the birth family somewhere.

I guess my struggle is that I'm not sure—and I would suggest I'm an amateur in this field. I can think of 15 or 20 different things that should be defined as abuse. There was an example used yesterday where the birth father did the abuse and the birth mother was present and witnessed it. So is the birth mother part of the abuse, or is the birth mother a victim? In many cases I'm familiar with, the birth mother was as much a victim as the child.

It is our intention, and our hope and belief, that it should be covered under the regulations, which are not going to be done in isolation in a closed room. There will be close consultation on the regulations with individuals in the field—with groups in the adoption field, with people within the ministry who are familiar with it, with children's aid societies—and I personally would be much more comfortable were the experts to sit down and draw upon their professional knowledge to develop the definition of "abuse."

Ms. Churley: Just briefly, this does fall out of the scope of this bill and it may well be that, Mr. Jackson, you want to approach this at another time in some other kind of bill, if it can indeed be approached, because that is a more difficult one. I should say again, in the context of people being able to find each other these days, that I guess foster parents are at the top of the list in terms of probably having more information about the children they take in, for obvious reasons, but there's nothing in this bill. That's what I want to point out again. We often hear bantered around that these records are going to be made public, and they're not. The only people who have access to them are, in the scope of this bill, the birth parents and the adoptees, period. I believe there are amendments for birth siblings and grandparents and things like that, but this is not like an open record where foster parents or anybody else can have access to people's personal information.

Mr. Jackson: Forgive me. I just raised that as an incident. I want to get back to the cases that were presented to me last night which deal with children in care because they were a witness to a major homicide, or the parent didn't abuse them but is on the sex offender registry and is a drug addict. I'm not convinced that we shouldn't be trying to protect that individual. I'm not convinced that this legislation is going to help us protect those individuals. I do believe that those individuals need that kind of disclosure veto.

Mr. Jeff Leal (Peterborough): Having spent time on a board of a children's aid society, I do have a question for—I'm sorry, you are the assistant deputy minister?

Ms. MacDonald: Yes, sir.

Mr. Leal: When this legislation was being contemplated and you traditionally go out to stakeholders' groups, was OACAS, which is the umbrella group for all children's aid societies in Ontario, consulted? I want to follow up, because we seem to get bogged down now on crown wards and the role of children's aid societies. I would have thought that, obviously, you've handled this; you've gone to the OACAS and asked for their input on a major piece of legislation which really has a significant impact on their operation. I'd just like to hear your response, if I could.

Ms. MacDonald: Yes, there was consultation with the OACAS, not once but several times. The OACAS itself had views on what amendments should or should not be introduced to the bill, of course, as did all stakeholders. But we definitely did consult with them.

Mr. Leal: Is there a summation of items that they may have raised that are being addressed in the bill with regard to that consultation?

Ms. Krakower: I believe that the suggested amendments from that group were encompassed or included with COAR, the Coalition for Open Adoption Records.

Mr. Leal: OK, I just wanted to verify that.

Ms. Churley: I guess we're taking a lot of time on this one amendment, and we do need to move on. But it's an important one, and I acknowledge that. I do want to say that these things are even more complicated in that, again, because it's outside the scope of this bill, we hear stories—and I'm not talking about them here because it is outside the scope, just as foster parents are—where, unfortunately, children are adopted into abusive homes. People fall through the cracks and do a good snow job on the social workers.

I have a friend who gave up her child about the same time I did. Years later, her adult daughter came back into her life. She had run away when she was 13 years old because she had an abusive, alcoholic adoptive father. It was never reported and there was nothing anybody ever did for her. I just heard, as other people are telling stories on the other side of this issue, from others now. People are coming forward about being adopted into abusive adoptive homes with no support and no help. They're saying, "What about us? Nobody came to help us."

I'm just saying that; I'm not suggesting there's anything we can do with this bill to remedy that situation. I'm pointing out that, once again, we can't cure all the ills; we need to do our best. But there are both sides to this story.

1610

The Chair: Mr. Parsons?

Mr. Parsons: Maybe I'm out of line on this, but just to refocus, the discussion has seemed to slant toward, "We want to prevent a four- or five-year-old from getting involved with a birth parent." We're talking about adults. They may have been children at the time and in the care of the CAS, but the question is really the exchange of information among adults.

We've had examples of the bad experiences of someone being adopted into an abusive family or someone being abused in foster care—thank goodness that is extremely rare in this province—but there are birth families that have never been involved with the agency and have had some pretty unpleasant experiences in their home too. I would suggest that individuals who have been adopted are no different from any others. I don't want the focus on protecting children from abuse. We're dealing with adults and their right to know.

The Chair: Mr. Jackson?

Mr. Jackson: I would move that government motion 211 be amended by striking out "a victim of abuse by the birth parent" wherever it appears in subsections 48.4.4(7), (9), (10), (15) and (16) of the Vital Statistics Act and substituting in each case "found to be in need of protection."

The Chair: There is another amendment. We are going to concentrate only on this latest amendment for any further debate. Is there any debate on this latest amendment? None?

Mr. Jackson: Can we wait until we have copies circulated?

The Chair: We'll wait until we receive those. Do you wish to make a few comments?

Mr. Jackson: No. I've commented. I've put on the record the concerns of this group of adoptive parents and adoptees who have requested this.

The Chair: Do we all have the amendment? Any more comments on the matter?

Mr. Norman W. Sterling (Lanark-Carleton): As I understand it, this would give protection to a larger number of young people who were found to be in need of protection. The problem with the existing amendment, which I guess we passed yesterday—did we pass it yesterday after I left?

The Chair: No, nothing happened. We're still on the same one, and this is an amendment to it.

Mr. Sterling: I'd like to know what the position is with regard to including this in terms of how the ministry reacts to it.

The Chair: Is anybody prepared to answer that?

Ms. Kathleen O. Wynne (Don Valley West): I think Mr. Parsons has actually spoken to this. I won't be supporting this amendment because it's too broad. "Abuse" is to be defined in regulation. Abuse could be direct, it could be indirect, it could be complicit, but we're not dealing with the definition of "abuse" in this motion. We're dealing with the disclosure of records. This amendment is too broad, and we're going to deal with the definition of "abuse" in regulation. That's why I won't be supporting it.

The Chair: Any further debate?

Mr. Sterling: If a child is found to be in need of protection, that usually entails a court process, doesn't it? They've gone through a court process to have the child in protection, right?

Ms. Susan Yack: Yes.

Mr. Sterling: So a court has heard a case where they felt a child needs to be taken out of the hands of the birth parent in order to protect the child?

Ms. Yack: A court has found the child in need of protection, yes. There are many grounds on which a child could be found in need of protection.

1620

Mr. Sterling: But it's not a decision that's lightly taken. It's a pretty significant move on the part of the court to do this.

Ms. Wynne: Can I just respond to that? I think the point Mr. Parsons was making earlier was that that protection wouldn't have to be abuse. What we're saying is that this amendment deals with abuse, and to talk about protection is way too big a net, so we're using abuse as the test, and abuse will be defined in regulation.

Mr. Sterling: OK. Can you tell me what abuse is, then?

Ms. Wynne: I just said abuse—

Mr. Sterling: But you can't have it both ways. You say it's casting it too broad, but you're not going to tell us what the limits are.

Ms. Wynne: Mr. Parsons will speak to that.

Mr. Parsons: If I look back over time, when children have come into care in our CAS and are in need of protection, in some instances the need for protection was that the parents were homeless. Although the initiatives today are to deal with that and keep the family together, if we go back 25 or 30 years, children came into care because the parents were homeless. They came into care because the parents did not have the money to feed the children. Children came into care because of a need for dental services when parents were unable. I can even think of cases where children came into care because they did not have clothing. Those parents now do not in any sense in my imagination present a risk to the adult who wishes to contact them.

I strongly believe "in need of protection" is too generic and too broad a term. I don't construe the lack of money within a household as being abuse. There have been parents who have voluntarily said, "We can't provide the care," and then courts have said, "Actually, this child needs protection." So the term is too broad.

Mr. Jackson: If we were able to amend the word "abuse"—stand alone in an earlier section to include physical and emotional—why are we not being consistent in the legislation and putting it in here? I'm accepting what you're saying, and I know that to be a fact.

I told you about my two concerns here. We're limiting it just to the abuse by the birth parent, when in fact there are cases of protection required for an adult adoptee, in their mind, based on the circumstances they were involved in. I'm concerned that it is by the birth parent that narrows it down. The second issue is that the abuse here is open-ended for interpretation by the regulation, whereas in other sections we have said "sexual abuse," "physical and emotional abuse" and "attempted sexual abuse." Those were the four categories that we have put into previous amendments. Why are we not putting that

in here to be consistent with the legislation? The regulations can be narrower here under this definition because it only speaks to abuse, whereas we have included it in other sections.

I agree. Maybe my caucus does, but I personally don't want to capture those cases that you've identified. You're still not helping me try and help to protect—for identity purposes, someone who is a known sex offender on the sex offender registry, who is a known drug addict and so on and so forth. I know this is sensitive for some people. I think if an individual knows that and wishes not be contacted—and there are some of these kids who were 12 years old at the time and, in six short years, they have to make a decision within 12 months of their 18th birthday. All of a sudden now it's, "You better decide if you should exercise this veto."

Again I reiterate: The trigger is this custodian out there in the legislation who determines that there's info on the file that warrants a disclosure veto because there's an application from this individual. I really want to see this—can I ask legal counsel? What is the effect of dropping the words "by the birth parent"?

Ms. Krakower: I just want to address your comments about the definition, that we changed "physical, emotional or sexual." That was with respect to the definition of "harm;" that was with respect to a different situation, where somebody would be applying to the Child and Family Services Review Board in order to show they would experience harm in the future in those kinds of categories. This is a different kind of situation, where somebody would have experienced abuse as a child, just to clarify that.

Mr. Jackson: So physical abuse or emotional abuse isn't included, only sexual abuse?

Ms. Krakower: The definition of "abuse," again, would be dealt with by—

Mr. Jackson: That's not good enough. It was good enough in the other section; it should be good enough in this section. That's what's causing me concern. I have enough legal training to know that if it's clear in one section but not clear in this section, you're free to define what that means. Even in your answer, they are different circumstances dealing with a different cohort.

Ms. Krakower: I also wanted to correct one statement about the custodian. In the situation where there would be a prohibition on information, the custodian's role in this situation is not to be the determiner of whether there would be abuse. All the custodian is doing in this situation is tracking down which particular children's aid society a person was adopted from.

Mr. Jackson: You're right. Thank you for that. I meant to say, "the registrar." The registrar is the final arbiter.

Ms. Krakower: Actually the children's aid society director is the final arbiter in this case.

Mr. Jackson: No, in section 5, you say that you are giving—where was that? I raised that question yesterday. "The board may substitute its judgment for that of the

local director and may affirm the determination made by the local director or rescind it."

Ms. Krakower: I think that was with respect to a situation where there was an appeal by the birth parent. In that case, when the birth parent went before the Child and Family Services Review Board, if, upon looking at the file, the CFSRB determined there was no abuse, then that decision would substitute for the director of the CAS's decision.

Mr. Jackson: So the final arbiter is the registrar, because you can overturn the decision of the CAS person?

Ms. Krakower: The final determiner is actually the CFSRB. All the registrar is doing is putting that information on the file—

Mr. Jackson: In front of them.

So what is the effect, in subsection 7, of removing the words "by the birth parent"?

Ms. Krakower: It would broaden the section. That would mean there could be abuse by any other person.

Mr. Jackson: But that person and/or their spouse wouldn't necessarily be the applicant for access to the information. The example I used a couple of days ago was that of a child who was abused by a friend of the birth mother. That friend is now married to the birth mother. The birth mother makes the application—that's a legitimate concern. You have common law situations all over the place where the person says, "My need to live with this man is far greater than my need to protect my child."

Ms. Krakower: I think what it comes down to is that this bill is about the birth parents and the adoptees having access to information.

Mr. Jackson: I get that. What you're saying is that cases like that would be part of the cracks those adoptees would fall through, because it has to be abuse by a birth parent and not by a member of the immediate family. Especially with small boys, it's generally, predominantly a member of the extended family.

The Chair: Let's see if Mr. Parsons can clarify that.

Mr. Parsons: The concerns we're dealing with are relevant to safety. The case you've described where the adoptee had been abused by a friend of the birth mother, the issue is, today, at this instant, does that adult need protection from their birth mother? I say no.

1630

Mr. Jackson: And her father—and her stepfather?

Mr. Parsons: We're not talking about children. We're talking about adults.

Mr. Jackson: And her stepfather?

Mr. Parsons: Uh-huh. But the information would come from the birth mother. The legislation deals with the birth mother and the birth father. I don't believe it deals with extended or blended families. It deals with birth parents, and does that individual, as an adult, need protection from his or her birth mother? I say no. It may not be very pleasant, but I would repeat they they have the right to know.

Mr. Jackson: I made my point. I feel very strongly that this shouldn't be that limiting.

The Chair: Mr. Sterling, you're next.

Mr. Sterling: I'd like clarification from Mr. Parsons. Are you defining "birth parent" now to be actually the birth father or the birth mother?

Mr. Parsons: Yes.

Mr. Sterling: That's it?

Mr. Parsons: That's it.

Mr. Sterling: So the regulation won't include more?

Mr. Parsons: The regulation deals, I believe, with birth parents—birth mother, birth father.

Mr. Sterling: It won't include more?

Mr. Parsons: I'm looking for clarification.

Ms. MacDonald: At the moment, the bill would deal with the birth parent, either the birth mother or birth father. However, there is a government motion, number 2, which also proposes that the definition of "birth parent" could be "such other persons as may be prescribed." You may recall that last week there was some conversation about how, in the future, there might be a desire by the Legislature to contemplate a broader definition of "birth parent" to include persons involved in a more technologically assisted birth of a child.

Mr. Sterling: But it's not the Legislature that's going to make that decision. Cabinet is going to make that decision. So you're wrong in telling me that the Legislature is going to have that choice or debate that issue.

Ms. MacDonald: I'm saying, sir, that the Legislature has the choice with respect to voting on this motion. I may have misspoken.

Mr. Sterling: Our problem here is that everything is prescribed, and these are very, very important decisions. In terms of Mr. Jackson's motion, there's no guarantee that cabinet wouldn't prescribe a stepfather who had provided support etc., etc. to a child. That's the problem we have with this bill. We're going around in circles here because we can't get our hands on where the limits are.

The Chair: Any other comments? If there are none, I will now put the question. Shall the motion carry?

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

Therefore, we'll go back to 21l. Do I have any further debate on 21l? If there is none, I will now put the question.

Interjection.

The Chair: OK, no problem. It's the one that we were left with from yesterday, I believe. It's the one from when you left, Mr. Sterling.

Mr. Sterling: 21n? Doesn't it deal with that section of 21l?

The Chair: Number 21l is what we were left with. The clerk tells me I should go to 21l and not to 21n. Would you explain why?

The Clerk of the Committee: The motion we just voted on was the amendment to the amendment. The amendment which was labelled 21m was the amendment to 21l. That amendment lost. We're now back to 21l.

The Chair: Therefore, I'm prepared to take a vote, unless there's any more debate. I will now put the question. Shall the motion carry? All those in favour? It carries.

Now we will go to 21n. Mr. Jackson, I believe it's yours.

Mr. Jackson: I move that government motion number 21, as amended, be further amended by striking out subsection 48.4(10) of the Vital Statistics Act as set out in that motion and substituting the following:

"Appeal

"(10) An order or decision of the board under this section may be appealed to the Ontario Court of Justice."

The Chair: Any comments or debate on this motion?

Interjection.

The Chair: We are at 21n, Ms. Churley. We dealt with the other one. It carried.

Mr. Sterling: This particular motion gives an appeal to a person who is dissatisfied with a decision of the board to an Ontario Court of Justice. I feel it's necessary, from the point of view that if we are going to have a hearing behind closed doors, we're dealing with a very significant right and we don't know whether there's going to be one board member or three board members there. If there's one board member there, the decision could be very arbitrary, based on the beliefs of that particular individual, as to whether a record should be disclosed or not disclosed. Therefore, I feel it's very important, in terms of due process and all of the rights that we believe in, to allow an appeal of a decision of the board to the Ontario court. These decisions, for some people, are life-threatening and life-changing. I believe that you can't just put someone in a room behind a closed door and have some faceless appointee make a decision, and assume that they're going to be full of the wisdom that is necessary to come out on the right side of the issue. So I speak very much in favour of this amendment.

Mr. Parsons: I struggle to disagree with the previous member. As I've said before, I know just enough law to be dangerous, but it is my impression that if this issue were to move to the Ontario Court of Appeal, a different set of rules would kick in: There are witnesses and the ability to cross-examine, and it becomes a public event. For an issue that is so sensitive, we know that the process for the tribunal will have to be to recognize that sensitivity. It may very well be somebody appearing before three people, but it may also mean ticking off a form and faxing it in. This process makes it too public. It will preclude certain individuals from wanting to be part of the appeal. In a court, do you not have an opportunity to cross-examine? There are people who simply don't want to tell their story publicly. It adds, I would suggest, a

great deal of potential delay, because how far will it go? If they grant leave to appeal, how far does it then go on from there?

We believe that this is a bill that merits a fairly rapid decision. I've never had the sense that if there's a decision that someone disagrees with at a lower court, going to the upper court and winning doesn't necessarily mean it was the right decision; it just means that the better lawyer presented a better case. These go on ad infinitum, and I certainly can't support it. I think we have a process that has to be fairly quick.

I am personally contacted by far too many individuals who are my age and who want to know their birth parent, and they also know the clock is running. In fact, I would suggest the length of time this is going through committee is proving very frustrating for these individuals want to have contact and do not want to lose the opportunity forever. This would be another delaying roadblock in the process, and I cannot support it.

1640

Mr. Sterling: I think that people should be clear that all court proceedings are not done in public. There are lots of court proceedings that have special circumstances to them where they're done in camera and, particularly for this kind of a matter, the court can deal with them with sensitivity.

You scare me further when you say this may be done on an application form, and some person far off says no. What does the person do? They haven't had the chance to plead their case. They haven't had a chance to have a lawyer plead their case. They've had no assurance that anybody paid any attention to their application. I think this is an affront to the person's rights under our Charter, and there is really no reason why an appeal to a court shouldn't be given. You just can't allow people to sit behind a closed door and not be answerable to anybody who makes decisions that are life-changing and not allow some kind of accountability. There's no accountability in what you're proposing to the people who are going to sit on this board. They say yes; they say no. Who's watching them?

The Chair: Is there any further debate? If there is no further debate, I will put the question.

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

Page 21: Shall that section, as amended, carry?

Mr. Jackson: I did put every amendment in order so it flows. I have it in a nice binder. I'm just going to quickly check to make sure.

The Clerk of the Committee: It's pages 21(a) through (d), Mr. Jackson.

Mr. Jackson: I've got that. I'm sorry. We've passed 21l. Did we pass 21—I have 21; then it's a, b, c and d.

The Clerk of the Committee: If I can just clarify—

Mr. Jackson: Are we going to go back to vote on that?

The Clerk of the Committee: Motion 21 has been amended. Page 21e carried. Page 21f carried.

Mr. Jackson: I don't even have e and f in front of me.

The Clerk of the Committee: Well, they were the ones back last week—

Mr. Jackson: Fair enough.

The Clerk of the Committee: —from yesterday. So 21j carried.

Mr. Jackson: Could you maybe scare me up e and f? It's already been passed. I just want to know if government motion 21, 21a, b, c and d have been passed. Yes or no?

The Clerk of the Committee: No. That's what we're doing right now.

Mr. Jackson: By approving the whole section, we've got it all covered?

The Clerk of the Committee: This is motion 21 that has been amended, and then we would do section 8.

The Chair: So basically, we are going to be voting on 21a, b, c and d, as amended.

Mr. Jackson: You're going to give me a copy of e and f, when you have a moment?

The Chair: Yes.

Mr. Jackson: Thank you.

The Chair: Let's deal with the motion that is in front of us, so it's clear to everybody what we'll be voting on.

Mr. Sterling: No, but let's vote on it.

The Chair: I'm happy that you will assist, Mr. Sterling.

I will be happy to take the vote. Shall this motion, as amended, carry? Those in favour? Those opposed? The motion, as amended, carries. So we have dealt with 21a to d.

Now that we've dealt with all those amendments, we will take a vote on the entire section. Shall section 8, as amended, carry? Those in favour? Those opposed? The section carries.

Now that we've dealt with section 8, we are going to go back to section 1. Mr. Sterling, are you ready now? This is the Liberal section that you asked be stood down. Can we deal with it now? It's page 2, which is section 1. It would be our original page 2. We dealt with it on the first day. Mr. Sterling, can we proceed, or do you still want to—

Mr. Sterling: I'm just trying to find my motion here.

Ms. Wynne: Isn't it a government motion?

The Chair: Yes it is, but Mr. Sterling asked that it be stood down.

Mr. Sterling: What page are we on?

The Chair: Page 2. Mr. Parsons, do you wish to make some comments to refresh our minds?

Mr. Parsons: It's a great amendment.

The Chair: I appreciate your comments, and I'll be happy to hear any other comments.

Mr. Parsons: I believe we already read it into the minutes and spoke to it.

The Chair: I'm prepared to take a vote, if there is no objection to that. I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Shall section 1, as amended, carry? Those in favour? Those opposed? The section, as amended, carries.

We also stood down section 2. It's a government motion. Was it read on Monday?

The Clerk of the Committee: This is a replacement.

The Chair: Read the replacement, will you please, Mr. Parsons?

Mr. Parsons: I move that subsection 6.1(1) of the Vital Statistics Act, as set out in section 2 of the bill, be amended by striking out "sections 48.1 to 48.4" and substituting "sections 48.1 to 48.4.5".

The Chair: Is there any debate on the motion?

Mr. Jackson: So it's not as we have it in front of us; it's 48.4.5, correct?

Mr. Parsons: Right. Sections 48.1 to 48.4.5.

Interjections.

Mr. Parsons: If you just vote for it, we can explain it after.

The Chair: Mr. Parsons is an engineer, so he's a straight person; clear numbers.

Mr. Jackson: You have your rules in your caucus and we have our rules, OK?

The Chair: You tell me when you're ready, gentlemen.

Mr. Jackson: My apologies. I don't know why I don't have this page in front of me.

Mr. Sterling: Mr. Chair, is it anything but re-numbering? Is that all it is?

The Chair: That's all it is.

Interjection: OK, that's fine.

The Chair: OK, so we are ready, then. If there is no further debate, shall the motion carry? Those in favour? Those opposed? The motion carries.

Shall section 2, as amended, carry? Those in favour? Those opposed? Section 2, as amended, carries.

Section 6 was also stood down, and we are going to go with pages 4 and 4a. Mr. Sterling and Mr. Jackson, that's your motion. It's pages 4 and 4a, subsections 48.1(3) to (3.8).

1650

Mr. Sterling: I move that section 48.1 of the bill be amended,

(a) by striking out "Subject to subsection (4)" at the beginning of subsection 48(3) and substituting "Subject to subsections (3.1) to (4)"; and

(b) by adding the following subsections after subsection 48.1(3):

"Disclosure veto

"(3.1) Subsections (3.1) to (3.8) apply only to those adoptions that came into effect prior to the date on which

section 6 of the Adoption Information Disclosure Act came into force.

"Same

"(3.2) A birth parent may apply to the Registrar General to register a written veto prohibiting disclosure of a birth registration or adoption order under this section.

"Same

"(3.3) When a birth parent pays the required fee and produces evidence satisfactory to the registrar general of the birth parent's identity, the registrar general must register the disclosure veto.

"Same

"(3.4) A birth parent who registers a disclosure veto may file with it a written statement that includes any of the following information:

"1. The reasons for wishing not to disclose any identifying information.

"2. A brief summary of any available information about the medical and social history of the birth parents and their families.

"3. Other relevant non-identifying information.

"Same

"(3.5) When an applicant is informed that a disclosure veto has been registered, the registrar general must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

"Same

"(3.6) A birth parent who registers a disclosure veto may cancel the veto at any time by notifying the registrar general in writing.

"Same

"(3.7) Unless it is cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the birth parent.

"Same

"(3.8) If a disclosure veto registered by a birth parent under subsections (3.2) and (3.3) is in effect, the registrar general shall not give the uncertified copies to the applicant."

The Chair: Any debate on the motion?

Mr. Sterling: Perhaps I'd have an opportunity to explain what the motion is. This is a motion that would allow those 3% to 5% of people whose names appear in the record to register disclosure vetoes. It's the same kind of section that is contained in the British Columbia legislation, the Alberta legislation and the Newfoundland legislation.

We've talked over the past couple of days about certain circumstances and instances where we as legislators would like to protect the confidentiality of the birth records. I think that it's been acknowledged in some of this debate that, in spite of our wisdom, there are situations that are not contained in children's aid society records and there are other circumstances that have not been observed by people and officials. Also, the system that we're setting up is very bureaucratic in nature and is going to cause a great deal of problems with regard to people coming in front of a board and discussing some of

their most personal life, perhaps with a stranger, with three strangers, with whomever. I don't understand the overall objection to leaving that decision with those people who are most likely to be affected: either the adoptee or the birth parent.

We've heard in the Legislature a number of stories where some people are truly frightened at the prospect of a disclosure being given to either a birth parent or an adoptee. We've heard about this "non-contact" provision of the legislation as being absolutely useless in terms of the effect on the family of the birth parent or an adoptee, because we know, as was said to us in this committee yesterday, that the non-contact is strictly between the birth parent and the adoptee. It's not between the adoptee and the other siblings of the birth parent; it's not between the adoptee and the spouse of the birth parent; it's not between the adoptee and the sisters and brothers of the birth parent. Therefore, the notion that a birth parent is going to receive this information and not contact those other people will not be controlled by any fine or sanction contained in this act. So the real harm that is done is the disclosure when a person doesn't want it. That's the harm. The harm is the disclosure, violating the privacy rights of the mother, the birth parent and/or the adoptee. So the only way that this can be protected is by not giving this disclosure.

This legislation goes a long, long way to change our existing laws. At the present time, in order to go through our system and be able to get a reunion, there has to be a positive act on behalf of both the adoptee and the birth parent. They both have to register with the Ontario government, saying, "I want this to happen." This legislation switches the burden around and says, "If you don't want to be contacted, you've got to register." As I said before, 3% to 5% of people may do that. That's the experience in the other provinces that have the same kind of legislation.

The other part that I think people aren't perhaps paying enough attention to is what rights are being changed here retrospectively? We're changing 30 or 40 years of trust between people who have their names on a record sealed somewhere, and the government which promised them over that period of time that those records would remain sealed unless both parties actively contacted the government to unseal those records.

We've heard Clayton Ruby. We know of the Alberta legislation, which has been ruled constitutional, where they have a disclosure veto. I think the government is playing down the risk of the constitutionality of this far too much. We've heard Mr. Ruby saying that, in his mind, there's no question that there's a constitutional problem.

I've practised law, and I know that there are different opinions, particularly on constitutional law. But I don't think that Mr. Ruby is alone in his opinion with regard to this law and the constitutionality of this particular provision. It seems to me that the government is risking the whole bundle, the whole disclosure paradigm, without having this section in it. So you're taking a risk on allowing 95% to 97% of people in Ontario to obtain their

record for the sake of the final 3% to 5%. I would argue that in some cases, for those 3% to 5%, if those individual cases came in front of each and every one of us, we'd go to bat for them.

1700

I really don't understand. I know every editorial of every newspaper that I have seen in Ontario supports the inclusion of a disclosure veto. They have, in their minds, weighed the rights of the people seeking the information and the rights of the people who would want to retain their privacy in this respect. Quite frankly, I haven't met too many people on the street who think that this is a great sacrifice to include in the legislation and still have the intent of the legislation carried forward.

Our party has made it quite clear that if this disclosure veto is included, the bill will be supported on third reading. If it's not, then there's probably going to be little if no support in the caucus for it.

There are a whole number of reasons why I think the government should consider this section very carefully. One of the reasons I didn't want to put it forward was that I was hoping there would be some second thoughts on the part of the government with regard to this matter. I really think that logic demands that the amendment be passed and included in the bill.

Mr. Parsons: I think this is probably the most emotional bill I've been involved with. I haven't been here that long, but I think it's because I see the faces and I see the people involved with it. It's an issue I've been around for quite some time through various things I've been involved in. I don't think today the way I thought three years ago. And this is no disrespect to you; I understand where you're coming from. In fact, I appreciate the sincerity that's gone into the debate from all sides on this.

But here's where I'm coming from. I know that there are birth mothers who were promised that their name would never be divulged. Maybe the person making the promise didn't have the authority to do it, but they did. I know at the same time that there are birth mothers who were promised that in the future there would be assistance given to help them find their child. Maybe they didn't have the authority to do that either, but they did. I don't know what the ratio is, but I've talked to quite a significant number of birth mothers who very clearly believed that they were going to be helped to find their child once they were in a position to become reinvolved with it.

If we were to pass a piece of legislation that says it is illegal in Ontario to discriminate against someone on the basis of age, except if they were born before 2005, we would be appalled. If we said that we are not going to discriminate against you on the basis of age, except for 3% to 5% of you, that would be wrong. I've started to focus on the adoptee, and the request, as I see it, from the adoptee is not to be given rights but to be given back the rights that everyone else has enjoyed, to be restored to the same level position as every other person in our society, to have access to it.

I wish I had a magic answer that would keep both parties happy. There isn't. Every time somebody gets a

right, somebody else kind of loses a right, because it infringes on it in some large or small way. I believe that adoptees unfortunately had their rights to information taken away, and I think it's time it was restored. For that reason, I'm not prepared to restore it for the people who were involved in it after today; I'm not prepared to restore it just for those once their birth parent or their child dies. If you restore it, you restore it today. This amendment continues to deprive too many individuals of their rights, and I can't support the amendment.

Ms. Churley: Just briefly, because we've all said these things the other day when we began, but for the record I don't at all support this amendment. I must say that people on the street who might agree, after hearing some of the stories that have been told about what could happen in the future, would upon hearing that perspective say that, yes, they'd support a disclosure amendment. But I must tell you, if you ask the 3% to 5% of the people who would still be discriminated against, I expect that they would not share that same position.

Retroactive legislation is not unknown when human rights are involved, and when something is right, all must benefit, not just those born after a certain date or only under certain circumstances. The Ontario Association of Children's Aid Societies fully supports leaving a disclosure veto out of this. I've made the case before that England, for over 20 years, and other jurisdictions, have had open adoption records, disclosure for adoptees and birth parents, and these things have not happened. You can't discriminate against those few.

There are some people here today who came before us in committee. There's a gentlemen here who came forward and talked about reuniting with his birth mother, who had been a rape victim. It was a moving story, but he also made it very clear that for him there's nothing to be ashamed about. He also made it very clear that he made contact with his birth mother and there was nothing at the time preventing him from doing so. There is not even a contact veto now. I would say that under these circumstances, if this veto is put in place, it's quite possible that he'd be one of those 3% to 5% we are voting to discriminate against here today. The wonderful healing process that he was lucky to have with his birth mother—he would not have been given that opportunity. He said that at the beginning she was reluctant, and perhaps she would have been one of those. It worked out well for them. That's not to say it would for everybody, and that's why a contact veto is there, to not allow that to happen should one of the parties so desire. But discrimination is discrimination, and I think that lives have been shattered on the other side of this too.

To finish up, let me tell a little bit about that other side. I hear from people who are, in some cases, suicidal or unhappy on the other side because they can't get the information. Women are losing babies in miscarriages and don't know why and are trying to find out. Preventable diseases are being passed on to children. People are living their lives in fear. They talk about that because they don't know. Time after time, you hear people are

living in fear because of not knowing. Elderly women in particular, in their 70s and 80s, who gave up children at birth want to know before they die. They just want to know how their children are doing.

Those are just some examples on the other side of this that we're not talking about so much. In the interests of getting this bill passed for those people I'm talking about here and others, I'll end it here. But I can't tell you how much I disagree with this. The other jurisdictions, despite the court cases in Canada, will have to backtrack on this eventually, as other countries decided to not even try to bring it in because it's discrimination.

1710

Mr. Jackson: I am concerned that this legislation will get a constitutional challenge. I happen to be someone who has fought for the last 10 years to get retroactive legislation for DNA testing for criminals so I can protect victims across Canada. It's something I've felt strongly about. But the difference between these countries that Ms. Churley is talking about—and I think it's wonderful that they've got that legislation. The problem is, they don't have a Charter of Rights and Freedoms. This is a unique document, and the last time I checked, I'm still covered under it. Mr. Ruby came and made a brief but compelling statement about that fact.

The truth of the matter is that DNA testing for criminals is not allowed retroactively. As long as they're incarcerated, they can be tested. The government knew that when—it would lose its own constitutional challenge. It doesn't prevent us from raising it. It's on the record, but I'll tell you, as a Canadian I'm upset that Ms. Churley would like to have this retroactively. Ultimately, the courts may probably not agree with her or Minister Papatello, because it sided on the side that you can't go in retroactively to a known offender who has been released from jail and ask them for a DNA sample, because it's retroactive in nature.

I just want to put that on the record. It's been bothering me, and that's an area of law where we already have a document that indicates there may be some concerns. I don't want to stylize it beyond that, because if you hire four lawyers, you get six opinions. God knows, there will be enough opinions about this legislation when we have a final draft.

I've said my piece, Mr. Chairman. These amendments were brought in and, frankly, as someone who supports a more open approach to adoption records, I'd hate to see this legislation go down when we could have resolved it for that 4% or 5% that three other provinces have deemed would be protected.

Thank you for giving me the opportunity to make that comment.

The Chair: Thank you, Mr. Jackson. Ms. Wynne is next.

Ms. Wynne: I don't want to prolong this discussion. I just want to be clear that, and I think we've said it before from this side, we understand that there are competing rights and interests. That's what makes this a difficult piece of legislation. I think we've all had to struggle with

it. I don't think it's been easy for anybody. We have attempted to put protections in place in terms of the contact veto and the option of a disclosure veto where harm may be a possibility, but I think at the end of the day what we've done as a government is come down on the side of the right to information, because as soon as there's an automatic possibility of a disclosure veto, the right to information is going to be lost by someone, and that's the right that we're saying trumps the others in this situation. I want to be on the record as saying that I understand the complexity of the situation and I accept the position that the right to information is the framework for this legislation.

Mr. Jackson: The truth is, we're going to have a group of lawyers now who are going to argue that because we passed 211, now we have—to use Ms. Wynne's own comments, who trumps whom? Once you've wandered into this area of a disclosure veto as a right for one group—I mean, we're not going to change this section, but the truth of the matter is, you've now introduced that into a potential court case. I can see why the government held firm in the first round with the legislation. Anyway, we'll let the lawyers discuss that later.

The Chair: Ms. Churley and then Mr. Sterling—of course on the motion.

Ms. Churley: On the motion, yes. Ms. Donna Marchand, who's not here today, just recently won a court case on this very issue. I can assure you that one way or the other, especially if there is a disclosure veto and some of the messy and sloppy recordings done in the past when it comes to adoption—there's just one court case won by an adoptee, who has now been provided with her information, and I'm afraid we've already gone down that path. So if that's your fear, I expect that this—I won't go into the details of it now. I don't have it with me, but if we come back here again—I hope we pass this today—I can provide more details to the committee, but I can assure you that we've walked down that path anyway, one way or the other.

Mr. Sterling: It is difficult to weigh rights and that kind of thing with regard to privacy in particular. This province is going to have the distinction of having the government which least cares about privacy in all of Canada with regard to this matter. The other provinces have found a different kind of balance between the right to privacy and the right for other people to get information. As Mr. Jackson says, you would like to change the rules retroactively with regard to what you are entitled to and what you are not entitled to. When you travel down those roads, you're travelling in dangerous territory.

I don't see it as a case of discrimination. I see it as a conflict between two sets of views as to what they were entitled to and promised and what the government practised. The registrar practised a sealed-record regime. The public came to rely on that, and now we're changing that retroactively. I just think that the disclosure veto, as found by the other provinces and some other jurisdictions as well, is a good balance between the two parts. If we

haven't struck a decent balance, the courts will throw it back at us.

The Chair: Any further debate? If there is none, I'll put the question. Shall the motion carry?

Mr. Sterling: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

The next one is page 5.

Mr. Parsons: I believe it is—

The Chair: Mr. Parsons, just one second, please.

We go to number 6. So back to you, Mr. Jackson.

Mr. Jackson: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.2(3):

“Disclosure veto

“(3.1) Despite subsection (3), the registrar general shall not give the applicant the uncertified copies if a birth parent has registered a disclosure veto.”

The Chair: Do you want to make any comments?

Mr. Jackson: It's self-explanatory, Mr. Chairman.

The Chair: Any debate on the amendment? If there is none, I'll be happy to take a vote on the matter. Shall the motion carry?

Mr. Jackson: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Van Bommel, Wynne.

The Chair: The amendment does not carry.

We go to page 7. Mr. Parsons, please.

Mr. Parsons: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.1(3):

“Notice of preferred manner of contact

“(3.1) If a notice registered by a birth parent under subsection 48.2.2(2) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the uncertified copies.”

Mr. Jackson: What are we talking about here with the uncertified copies? What are we talking about?

The Chair: Maybe the ministry staff can explain, please.

Ms. Yack: It refers to the uncertified copies that are mentioned in 48.1. That would be the uncertified copy, for example, of the original birth registration.

1720

Mr. Jackson: Why are we giving them uncertified ones?

Ms. Krakower: Why are we giving them uncertified copies?

Mr. Jackson: Yes.

Ms. MacDonald: I would need to ask my colleague from the Office of the Registrar General to come forward, please.

The Chair: Would you please come to the microphone so that we can all hear, and introduce yourself when you start.

Ms. Nancy Sills: My name is Nancy Sills, and I'm senior counsel with consumer and business services. You were asking why the Office of the Registrar General is going to give uncertified copies.

Mr. Jackson: Yes.

Ms. Sills: When the Office of the Registrar General gives a certified copy of a registration, it's admissible in court as evidence. I think the purpose here is to provide the information to the adoptee, but it is not going to be provided as proof to be used for other purposes.

Mr. Jackson: OK. But "for other purposes" could include any number of things required by the government. "Original birth certificate" is a phrase used quite frequently, from passports to applications. I wouldn't have even raised this, except that you're specific about them being uncertified copies, and our constituency offices are filled with applications for certified copies of various documents.

Ms. Churley: Can I answer what I think it is?

The Chair: Yes, and then I'll go back to staff.

Ms. Churley: It's to prevent identity theft. This was something that was raised during one of my bills. It's so this cannot be used for any legal reason. It's something that I was asked to consider, in fact, when I was doing my bill. As I understand it, that is really all it's about. It's very simple, making sure that this cannot be used for any legal reasons; it's for identity reasons only.

Ms. Sills: I would agree with that as well. It's for security reasons.

Mr. Jackson: So we're talking about a birth parent making an application to get the disclosure information from the registrar general, correct? They are seeking a copy of—what?—their child's original birth certificate?

Ms. Sills: They're seeking a copy of the original birth registration.

Mr. Jackson: OK. And then the child has a second birth registration, right? The one for the adoptive parent.

Ms. Sills: Yes, that's the substituted birth registration.

Mr. Jackson: So there are two copies we guarantee an applicant will get. The only reason I raise that is that I was revisiting the New South Wales legislation last night, and they put it right in the law that "an adopted person is

entitled to receive: (a) the person's original birth certificate, and (b) the person's adopted person's birth record," and then it goes on for some other items that are documented here. I didn't see in the legislation where we're ensuring that they get access to both.

Ms. Sills: In 48.2, it specifically states that the birth parent may apply and they can get the original registration, the substituted registration and any registered adoption order.

Mr. Jackson: So that covers everything?

Ms. Sills: Yes.

Mr. Jackson: OK. Where does the adoptee have the right to have access to their original document? What section is that in?

Ms. Sills: In 48.1(1), "An adopted person may apply to the registrar general for an uncertified copy of the original registration, if any, of the adopted person's birth and an uncertified copy of any registered adoption order."

Mr. Jackson: What page is that? Or is that in the original bill?

Ms. Sills: It's in the bill, section 6.

Mr. Jackson: It's 48(1)?

Ms. Sills: It's 48.1(1).

The Chair: Mr. Jackson?

Mr. Jackson: Just give me two seconds.

Mr. Parsons: Could I clarify? This amendment is not about whether the certificate is certified or uncertified; this amendment is about, at the same time, giving the individual the preferred method of contact. That's what the amendment deals with. Although I would suggest that for the individual, they're not after whether it's certified or uncertified. They're not after the birth registration; they're after the information on the birth registration. That's the whole point of what they're looking for.

Mr. Jackson: Fair enough. That's helpful. Are we giving a certified copy of their original document to the adoptee?

Ms. Sills: No, we are not.

Mr. Jackson: Why not? That is their identifying information.

Ms. Sills: Yes, but it's been superseded by the substituted birth registration, so it's not the current record that the office of the registrar general would issue a birth certificate from. Am I confusing you?

Mr. Jackson: No, you're not confusing me. The date of birth is not a problem—

Interjections.

The Chair: Let's have one meeting, please. When we have one meeting, everybody will be able to appreciate the questions.

Mr. Jackson, you still have the floor.

Mr. Jackson: I'm thinking now of people who were adopted 50 or 75 years ago. There are some problems with the nature of records kept at the time. In the last 25 years, these problems don't occur where you've got different dates for your birth, you've got different cities of your birth and all manner of things that are occurring.

Maybe it's my sensitivity to seniors who are looking at entitlement issues, when government systems say,

"This is your date of birth"—because you've got two sets of records. It's not a modern problem; it's a problem of persons who are aged. That's why I'm just wondering why we can't give them certified copies: (a) it saves them some money and (b) they're now of the stature where they might need them in order to apply for various other things that are required from time to time, especially if there is a difference in age or time of birth.

Ms. Sills: You would always be able to get a certified copy of the substituted birth registration and be able to get a birth certificate. So it's just the original birth registration that would only be an uncertified copy. If you're concerned about proof of identity, they would be able to get it; it just wouldn't be the original birth registration.

Mr. Jackson: My concern is not the disclosure issue; my concern here is where the information is at odds between the two documents. Which one does the government consider valid for purposes of determining the date of birth?

Ms. Sills: That would be the substituted birth registration.

Mr. Jackson: I've had cases where people have two different birth dates. It's an entitlement issue. I'll drop it. I now understand it. That was the thing that was concerning me: which one is the operative one? But you've answered the question, so thank you.

The Chair: You've answered the question. Mr. Jackson has finished. Ms. Churley?

Ms. Churley: All right. We can move on. Speaking as a former registrar general, I feel it's important to put something on the record, though. We should be very proud of how well kept the registrar general information is. For obvious reasons, it's very well kept. The information, both on the original birth certificate and the substituted birth certificate—which you now understand is what we're talking about here, after the adoption goes through. They're very, very good records. Where we have problems with records—and it's not to knock CAS—it's in some of the so-called non-identifying information and those particular records where things sometimes get really mixed up. I think, though, we're all clear on what we're talking about here now.

1730

The Chair: Any further debate on the motion? If there's none, I will put the question. Shall the motion carry? Those in favour? Those opposed? The amendment carries.

Now there's 7a. Ms. Churley, I believe it's your motion.

Ms. Churley: This is just a housecleaning one that we somehow all collectively forgot to get in here.

I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.1(5):

"Same

"(5) If the notice is withdrawn after the registrar general has given a copy of it to the applicant, the registrar

general shall endeavour to notify the applicant that it has been withdrawn."

This is, of course, self-evident and ensures that adoptees will be notified that a contact veto has been withdrawn.

The Chair: Is there any debate on this motion? If there is none, I will put the question. Shall the motion carry? Those in favour?

Mr. Sterling: What is the impact of the motion?

Ms. Churley: With the bill right now, I presumed it was accidental. People can register contact vetoes, but there's no mechanism, should somebody withdraw—which people have the right to do—a contact veto if they change their mind, to notify that adoptees can be contacted if a veto has been withdrawn. That's all it does. So if I, as a birth mother, put in a veto and then changed my mind and wanted that veto removed, right now the bill doesn't allow for the other party to be informed.

The Chair: Is there any further debate on this? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

We will move to page 8. Mr. Parsons?

Mr. Parsons: I move that section 48.1 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsections:

"Effect of application for order prohibiting disclosure

"(6) If the registrar general receives notice of an application under section 48.4.2 for an order directing him or her not to give the uncertified copies to the applicant, the registrar general shall not give the uncertified copies to the applicant before the registrar general receives,

"(a) a certified copy of the order; or

"(b) notice that the application for the order has been dismissed, withdrawn or abandoned.

"Effect of order

"(7) If the registrar general receives a certified copy of an order of the board directing the registrar general not to give the uncertified copies to the applicant, the registrar general shall not give them to the applicant.

"Rescission of order

"(8) Subsection (7) does not apply if the registrar general receives notice that the board has rescinded the order.

"Notice of prohibition against disclosure to a birth parent

"(9) If the registrar general has received notice under section 48.4.4 that, by virtue of that section, he or she is prohibited from giving the information described in subsection 48.2(1) to the applicant's birth parent and if that notice has not been rescinded, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the uncertified copies.

"Deemed receipt by registrar general

"(10) For the purposes of this section, the registrar general shall be deemed not to have received a notice or certified copy referred to in this section until the registrar general has matched the notice or copy with the original registration, if any, of the adopted person's birth or, if

there is no original registration, until the registrar general has matched it with the registered adoption order.

“Disclosure before deemed receipt

“(11) Subsections (6) to (9) do not apply if, before the registrar general is deemed to have received the notice or copy, as the case may be, the registrar general has already given the uncertified copies to the applicant.”

The Chair: Any comments on the motion from anyone?

Mr. Sterling: Can he explain the motion to us?

The Chair: If he wants to make any comments, he will. It's up to you, Mr. Parsons.

Mr. Parsons: Sure. This is part of the amendments that we have introduced that creates an automatic prohibition against disclosure of the birth parent until it can be determined that the birth parent did not abuse the adoptee. This has been the focus for the last little while. It only applies to crown ward adoptees, not adoptees who have been through private adoption. It means that when the birth parent asks the registrar general for identifying information, before giving that information, the registrar general has to check with the custodian, who determines whether there is a caution or restriction on that information.

The Chair: Is there any debate on the motion?

Mr. Sterling: Is there a way to determine immediately whether or not they have to check this through? There are 250,000 files; every birth parent's request is checked. This could take a lot of work.

Mr. Parsons: But not every birth parent's request is checked. Adoptees who have been crown wards will have been checked.

Mr. Sterling: How do they determine that?

Ms. Churley: That's the majority.

Mr. Sterling: The majority are crown wards?

Mr. Parsons: Probably, yes.

Ms. Churley: Can I ask a question on that as well? Most children, as we've ascertained, who are adopted become crown wards, from all of us who gave up our children in that way. So does that mean this would apply to every single adoption that came under children's aid?

Ms. MacDonald: Let me start by trying to explain the process, and that may help. If a birth parent applies for the records of their former child who became a crown ward, the Office of the Registrar General would not be able to determine whether that child had indeed been a crown ward or had never been a crown ward. So the business process would be that when the ORG receives an application by a birth parent for a file which the ORG does know to have been that of an adoptee, at that moment the file will be sent through the custodian and on to a CAS to verify whether there has ever been abuse and then back through the process.

First of all, we don't expect that every birth parent will apply in the first year. My staff are just verifying the volume of applications in the first year that occurred in other jurisdictions, and that may be of some assistance to the committee in looking at the volume overall.

Forgive me, Ms. Churley, I didn't catch the gist of your question.

Ms. Churley: I think you just answered it in terms of how it would work.

The Chair: Any further debate?

Mr. Sterling: You don't have any numbers or estimates of numbers or length of time that this is going to take?

Ms. MacDonald: We have not spelled out the business processes for the custodian at this point, Mr. Sterling. We would be doing that in regulation and obviously in extensive consultation with our stakeholders. The intent would be to work as quickly as possible but with all due care not to release the wrong record, obviously, to the wrong parent, who might well have been an abuser. So it would be as quickly as possible but with all due diligence.

The Chair: Further debate? I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

We'll deal with page 5. Mr. Parsons, you can introduce it now, please.

Mr. Parsons: I move that subsection 48.1(3) of the Vital Statistics Act, as set out in section 6 of the bill, be amended by striking out “subsection (4)” and substituting “subsections (4), (6) and (7).”

The Chair: Any comments? Any debate?

Mr. Parsons: This reflects those recent amendments so that instructions—

Mr. Sterling: OK. It's just numbering them.

Mr. Parsons: It's renumbering, yes.

1740

The Chair: I will now put the question. Shall the motion carry? All those in favour? Those opposed? The motion carries.

We go back to you, Mr. Parsons, for 8b.

Interjection.

The Chair: You have a correction? OK. Do you or Mr. Parsons wish to tell us?

Ms. Hopkins: On motion 8b there's a correction as a result of the passing of an earlier motion. Motion 8b proposes adding subsection (11). The section that would be added would be numbered subsection (12).

The Chair: Is that clear to all? Mr. Parsons.

Mr. Parsons: I move that government motion 8 be amended by adding the following subsection to section 48.1 of the Vital Statistics Act, at the end of that section:

“Mandatory delay in disclosure

“(12) If the registrar general receives notice that the Child and Family Services Review Board has given him or her a direction described in subsection 48.4.2(6), the registrar general shall comply with the direction.”

The Chair: Any comments?

Mr. Parsons: This provides for a delay where the review board is not prohibiting disclosure. It is to give the birth parent time to prepare for the disclosure of the identifying information.

The Chair: Any debate on the motion?

Mr. Jackson: Are we talking about the section that I put in about the delay?

Mr. Parsons: Yes. This relates back to yesterday, where you made an amendment that related to one party. There are now matching amendments that relate to all parties.

The Chair: Any further debate on the motion? If there's none, I will now put the question.

Shall the motion carry? All those in favour? Those opposed? Carried.

Page 9.

Mr. Jackson: I move that section 48.2 of the bill be amended,

(a) by striking out "Subject to subsections (4), (6) and (7)" at the beginning of subsection 48.2(3) and substituting "Subject to subsections (3.1) to (4), (6) and (7)"; and

(b) by adding the following subsections after subsection 48.2(3):

"Disclosure veto

"(3.1) Subsections (3.2) to (3.8) apply only to those adoptions that came into effect prior to the date on which section 6 of the Adoption Information Disclosure Act, 2005 came into force.

"Same

"(3.2) An adopted person may apply to the registrar general to register a written veto prohibiting disclosure of the information described in subsection (1).

"Same

"(3.3) When an adopted person pays the required fee and produces evidence satisfactory to the registrar general of the adopted person's identity, the registrar general must register the disclosure veto.

"Same

"(3.4) An adopted person who registers a disclosure veto may file with it a written statement that includes any of the following information:

"1. The reasons for wishing not to disclose any identifying information.

"2. Other relevant information.

"Same

"(3.5) When an applicant is informed that a disclosure veto has been registered, the registrar general must give the applicant the non-identifying information in any written statement filed with the disclosure veto.

"Same

"(3.6) An adopted person who registers a disclosure veto may cancel the veto at any time by notifying the registrar general in writing.

"Same

"(3.7) Unless it is cancelled under subsection (3.6), a disclosure veto continues in effect until two years after the death of the adopted person.

"Same

"(3.8) If a disclosure veto registered by an adopted person under subsections (3.2) and (3.3) is in effect, the registrar general shall not give the information described in subsection (1) to the applicant."

The Chair: Any debate or comments, Mr. Jackson? Any debate from the membership?

If there is none, I will now put the question. Shall the motion carry?

Mr. Sterling: Recorded vote.

Ayes

Jackson, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Chair: The amendment does not carry.

Ms. Churley, page 10, please.

Ms. Churley: I move that subsection 48.2(3) of the Vital Statistics Act, as set out in section 6 of the bill, be amended by striking out "and the adopted person's age."

I took the advice of COAR, the Coalition for Open Adoption Records, and others on this. What I'm amending here is that the bill requires that birth parents produce evidence of the adopted person's age. To many, that seems logical, but for a number of reasons, and I'll give you a few, historically birth parents are given no legal documents to prove that they gave birth or surrendered a child for adoption. They don't have a copy of the original birth registration form. They don't receive a copy of the adoption order or the consent to adopt, the document they've signed. So they have nothing that demonstrates that the birth or adoption took place. In terms of the birth father, sometimes they're not told of the date of the actual birth.

Furthermore, there are many birth mothers who are in a state of extreme distress and trauma after giving birth to a baby and then relinquishing it for adoption. I'm one of those who remembered my son's birthday every single day and lit a candle on his birthday. I've talked to other young women who have given up their children, later in life, who say that it was just too stressful and painful, and they tried to wipe the memory out—unsuccessfully of course, but they actually had wiped out the memory of the date of the birth of their children.

For those reasons, I put forward this amendment, because under those circumstances, there are some birth parents who would not know the actual birth date.

The Chair: Is there any further debate?

Mr. Parsons: I agree with that. In fact, if we go back in time 50 or 60 years ago, some births were not registered, some were very, very delayed, and there was great difficulty in producing evidence of them. However, the act currently doesn't require a birth certificate; it requires evidence satisfactory to the registrar. So there's a balance between saying, "unable to verify the date absolutely," and a concern that that birth parent not be given information on the wrong child.

We believe it is important that the registrar general have the ability to require the best evidence available to ensure that in fact the information being requested by the birth parent does relate to the child that we believe is the match. So we will not support the amendment, because

we believe the registrar general needs to have some evidence relating to the birth date to ensure that the right information is shared.

The Chair: Is there any further debate? If there is none, I'll put the question.

Shall the motion carry? Those in favour? Those opposed? The motion does not carry.

Mr. Parsons, page 10a.

Mr. Parsons: I move that subsections 48.2 (3) to (8) of the Vital Statistics Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Disclosure of information

"(3) Subject to the restrictions set out in this section, the applicant may obtain the information described in subsection (1) from the registrar general upon application and upon payment of the required fee, but only if the applicant produces evidence satisfactory to the registrar general of the applicant's identity and the adopted person's age.

"Notice of preferred manner of contact

"(4) If a notice registered by the adopted person under subsection 48.2.2(1) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the information described in subsection (1).

1750

"Notice of wish not to be contacted

"(5) If a notice registered by the adopted person under subsection 48.3(1) is in effect, the registrar general shall give the applicant a copy of the notice when the registrar general gives the applicant the information described in subsection (1).

"Temporary restriction on disclosure

"(6) The registrar general shall not give the information described in subsection (1) to the applicant while any of the following circumstances exist:

"1. The registrar general is required by section 48.4.4 to ask a designated custodian for notice about whether the registrar general is prohibited, by virtue of that section, from giving the information to the applicant. However, the registrar general has not yet received the notice.

"2. The registrar general has received notice of an application under section 48.4 or 48.4.1 for an order directing him or her not to give the information to the applicant. However, the registrar general has not yet received either a certified copy of an order or a notice that the application has been dismissed, withdrawn or abandoned.

"3. A notice registered by the adopted person under subsection 48.3(1) is in effect. However, the applicant has not yet agreed in writing that he or she will not contact or attempt to contact the adopted person, either directly or indirectly.

"Prohibition against disclosure

"(7) The registrar general shall not give the information described in subsection (1) to the applicant if either of the following circumstances exist:

"1. The registrar general has received notice under section 48.4.4 that, by virtue of that section, the registrar

general is prohibited from giving the information to the applicant. That notice has not been rescinded. In addition, there is not a notice of waiver under subsection 48.4.5 that is in effect.

"2. The registrar general has received a certified copy of an order under section 48.4 or 48.4.1 directing him or her not to give the information to the applicant. The registrar general has not received notice that the order has been rescinded.

"Deemed receipt by registrar general

"(8) For the purposes of this section, the registrar general shall be deemed not to have received a notice or certified copy referred to in this section until the registrar general has matched the notice or copy with the original registration, if any, of the adopted person's birth or, if there is no original registration, until the registrar general has matched it with the registered adoption order.

"Disclosure before deemed receipt

"(9) Subsections (4) and (5), paragraph 2 of subsection (6) and paragraph 2 of subsection (7) do not apply if, before the registrar general is deemed to have received the notice or copy, as the case may be, the registrar general has already given the information described in subsection (1) to the applicant."

The Chair: Any debate on the motion?

Mr. Sterling: Maybe we could have an explanation.

Mr. Parsons: I hate it when you do that.

What this section does is it defines or outlines the kind of information that can be shared with an applicant by the registrar general: the identifying information, the payment, the proof required, the contact preference and how to deal with the no-contact notices.

The Chair: Any further debate on the motion?

Mr. Sterling: Can I just ask one question about the non-contact notice? What's contained in the non-contact notice? Just the ban?

Mr. Parsons: The non-contact notice provides them with the information but indicates that they are prohibited from contacting or arranging for someone else to contact the persons named in that information.

Ms. Krakower: I would just like to add that in addition to the actual contact preference, there would also be a medical form or information that would be filled out by the individual who put the no-contact notice in place, as well as a reason for the no-contact notice.

Mr. Sterling: Is that the information in subsection (1)?

Ms. Yack: If you look at 48.3(4), it says, "The notice may include a brief statement concerning the person's reasons for not wishing to be contacted and a brief statement of any available information about the person's medical and family history."

The Chair: Is there any further debate?

I will now put the question. Shall the motion carry? Those in favour? Those opposed? The motion carries.

Mr. Jackson, page 11.

Mr. Jackson: Give me two seconds.

The Chair: It deals with subsections 48.2(3.1) through 48.2(3.3).

Mr. Jackson: I move that section 48.2 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsections after subsection 48.2(3):

“Exception: former crown wards

“(3.1) Despite subsection (3), the registrar general shall not give the applicant the information described in subsection (1) about an adopted person who was a ward of the crown before being adopted, unless the adopted person has registered a notice authorizing the release of the information to a birth parent.

“Same

“(3.2) Upon application, an adopted person who is at least 18 years old and who was a ward of the crown before being adopted may register a notice authorizing the registrar general to give the information described in subsection (1) to a birth parent.

“Same

“(3.3) An adopted person who was a ward of the crown before being adopted and who is at least 18 years old is entitled to the information in his or her CAS adoption file, and the society shall give it to the adopted person upon request.”

Mr. Chairman, I'm going to ask that we separate (3.2) and (3.3). The only reason I'm suggesting that is because I want to make sure that that crown person—actually, I could rework this to literally say that those persons who are eligible under this act to have a disclosure veto be entitled to have access to their files. I've checked this out. It's a right they have; it's just not entrenched anywhere in legislation. So subsections 48.2(3.1) and (3.2) deal with a blanket exemption, a disclosure veto for all crown wards. Subsection 48.2(3.3) was added later because I wanted them to have access to their records. I'd like to vote on them separately.

The Chair: Divide the motion in two.

The Clerk of the Committee: OK. So the motion will be (3.1) and (3.2), and then you want a separate motion for (3.3)?

Mr. Jackson: Yes. We'll have a separate motion unless counsel suggests that this might be better worded to include the CFSA, which should include some statement about access to their records if I want all crown wards to have access to their records. But I'm speaking to the motion, whether it's divided or not.

The Chair: OK.

Mr. Jackson: I keep harping on this issue of at what point does the adult adoptee get informed that there are issues in their CAS file involving abuse, as defined by regulation? I fundamentally believe that once you've told someone that, they should have a right to examine what is in that file. There's no law that says they can't, but I can't help but think that if there's nothing in this legislation that assists or facilitates or entitles an individual, now that the state has determined that they are vulnerable to the extent that it will cause them immense harm to have contact, they should at least know the detail. For anyone who has worked with incest survivors, this is a very essential piece of a puzzle that they are entitled to. It has nothing to do with contact. It has to do with the

pieces of the puzzle that they are trying to reconstruct within their own life, in their own mind, about what they have suffered, and no one is in a position to assist them with that.

1800

I also want to remind members of the committee that I still have a motion we have yet to deal with, which talks about access to counselling for these individuals who, upon learning this information, some for the first time, will be able to have, not mandatory counselling, but optional counselling made available to them, and it shouldn't necessarily be at their expense. If the state determines that information about their life must now be revealed and uncovered, the state has an obligation to determine that the person, in the process of becoming whole, has those instruments and tools that can help facilitate their becoming whole. That generally involves professional support, counselling and matters of that nature.

I'm asking legal counsel, or we could ask the ministry staff—it doesn't really fit in the bill to say that all crown wards should have access to their files, but I think there is a compelling case that sort of indicates that we're saying, “You are a special class of adoptees, and you should therefore have access to your records.” Can I get some—

The Chair: We can have a quick answer now—it is after six; we could end the evening.

Mr. Jackson: The answer could be given to me. We have a few days to craft an amendment. The ground has shifted rather considerably since I first drafted this.

The Chair: I am very happy to hear that. Do you want a quick answer now?

Ms. Churley: Can I ask for a clarification?

The Chair: Unless there is an objection, yes.

Ms. Churley: I'm not quite sure what you are talking about, but it's my understanding—and this is what we need clarification on—that there is no right to the CAS files except for the non-identifying information we've been talking about, right? Correct? What you're asking is that certain adoptees have the right to files they normally can't see now—

Mr. Jackson: Correct.

Ms. Churley: —outside of their non-identifying information that anybody can apply for.

Mr. Jackson: It's the principle I fought for in the Victims' Bill of Rights: If you don't know you're a victim, and then someone in the state and calls you up and says, “Do you know what? You're a victim. Therefore, no one is going to be able to see your file.” They'll say, “Wait a minute. I'm suffering all this trauma, all this mess in my life. Will somebody please tell me what happened?” They should have a right to access that information. That's why I would like to amend what I've tabled, so I can deal just with this specific cohort of individuals.

The Chair: Staff will provide that information to you.

Thank you all. We'll resume next Monday at the same time, between 3:30 and 4.

The committee adjourned at 1805.

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Mrs. Maria Van Bommel (Lambton–Kent–Middlesex L)

Also taking part / Autres participants et participantes

Ms. Lynn MacDonald, assistant deputy minister, social policy development division

Ms. Marla Krakower, manager, adoptions disclosure project

Ms. Susan Yack, legal counsel

Ms. Nancy Sills, legal counsel

Clerk / Greffière

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Standing committee on social policy

Adoption Information
Disclosure Act, 2005

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Loi de 2005 sur la divulgation de
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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Wednesday 14 September 2005

Mercredi 14 septembre 2005

*The committee met at 1005 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): Good morning. The meeting was to start at 10. It's just a few minutes after 10. Hopefully we can start in a minute or two, if everybody could have a seat.

Before we start, just a reminder that today's meeting will be from 10 to 12 and 1 to 5; we'll break for lunch for an hour. Tomorrow will be from 9 to 12 and 1 to 5, as I understand it, unless there are any suggestions we can agree on. I guess that will continue until we have debated this bill.

Mr. Ernie Parsons (Prince Edward-Hastings): We may finish today.

The Chair: That's fine, but otherwise we'd better be ready for 9 to 5 tomorrow.

As you remember, the order of business is Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents. We will resume clause-by-clause consideration. When the committee last met on June 7, we adjourned while debating Mr. Jackson's amendments to subsection 48.2(3.1) on page 11, and we'll go back to that. Mr. Jackson, the floor is yours.

Mr. Cameron Jackson (Burlington): Thank you, Mr. Chair. Before I begin, I want to make a couple of quick inquiries. As you know, when we adjourned, we adjourned for several reasons. One was that concern was expressed about the structure of the bill in its current form, and that a disproportionate number of amendments, from my recollection, were being parachuted into the process from all three political parties. This was not a very good environment in which to try to construct a bill, especially one that has had flags raised about its constitutionality and its impact on women's rights in Ontario. So before we move to clause-by-clause, I guess I

want to begin by asking if there are additional government amendments that have been tabled.

The Chair: Do we have anybody from the government side? Mr. Parsons, please.

Mr. Parsons: There will not be. Having attained perfection, we see no need to mess with it.

The Chair: Thank you. Mr. Jackson, back to you.

Mr. Jackson: So we have an admission by the government that there were problems associated with the bill, and yet we've seen no—

Mr. Parsons: I don't believe I said that.

Mr. Jackson: No. The media said it, and I believe the minister indicated that there were problems associated with the bill. That also came from the House leader's office. I'm trying to comprehend what the purpose of the additional time was, if not to try to make this bill better with the additional analysis of some of the important legal questions that had been raised and certain procedural issues.

I'm led to believe, then, that the government has made no changes, no amendments whatsoever from the time we last convened and were struggling with these amendments. My concern is that this is not going to facilitate a very fluid meeting, given that we are back to where we were three months ago, when there were substantive areas of concern being raised, which leads me again to issues around how the government plans to implement this legislation.

In the last three months, we have a more enlightened civil service, because previously we were asking them questions about this legislation where they had produced substantive amendments on very short notice. This whole issue of setting up an appeals mechanism and a tribunal—we didn't have any information on that. I'm wondering if we can now have the benefit of their analysis as to how the tribunal will work.

I'm in section 6 of the bill. I'm dealing with crown wards. I'm dealing with issues related to disclosure of information: the age of crown wards and the appropriateness of crown wards receiving information, whether or not a crown ward will have to wait until they're 18 in order to go before a tribunal to explain. I had hoped that this process would start with clarification on how that tribunal will work so that those of us who are crafting amendments are able to do so with the knowledge of how the government will proceed with the tribunal.

In fairness to the bureaucrats, they had to craft that on a moment's notice and drop the amendments in front of

us. I suspect that after three months they have had time to consider it. In that sense, I'd like to be able to get a little bit of information on that. I believe it was a request I made at the time when we were aware that the government House leader had indicated a willingness to defer this legislation in order to have more time to do it correctly.

The Chair: We'll ask the government again if they wish to answer that question, and then I know Ms. Churley wants to participate in the debate.

I should remind all of you that we are on page 11. There is a motion in front of us and we should try to address that. Nonetheless, you did make a statement and ask some questions, so I will ask Mr. Parsons, are there any answers to the questions raised or should I go to Ms. Churley?

Ms. Churley, you're next.

Ms. Marilyn Churley (Toronto-Danforth): I'm happy to have a response to Mr. Jackson's question if that's what you were going to do, but I did want to remind everybody that we are here today to go through all these amendments that are before us. During the course of discussing these amendments, questions can be asked and answered.

Again, we have people who are taking time off work to be with us, as when we sat before in this committee, and I'm hoping that full respect can be shown to those from the community who are here today who want to see this bill move forward.

At this point, that's all I have to say.

1010

The Chair: As Chair, I don't have to remind any members of this committee that we have been getting lots of letters from people urging us to move on. I suspect that's our objective as a group, and we should do that. Nonetheless every member has the opportunity to raise any questions that they have. That's why we're here, and I will continue to try to manage it that way.

Nonetheless I would appreciate if we can debate the motion in front of us. If there are no other comments, I'll go back to you, Mr. Jackson.

Mr. Jackson: For the record, Mr. Chairman, certainly Mr. Arnott and I do not wish to leave any impression, as you have, that our purpose today is to move things along quickly. We're here to do this properly. We have also received substantive information over the course of the summer, legal opinions that the rights of Ontario women in particular, birth mothers and certain adoptees in this province are being severely violated by this legislation. I, for one, do not wish to participate in a hasty exercise, OK?

I will make the grave prediction that I made when the NDP introduced the Arbitration Act, which culminated in the government statements in the same vein on sharia law in the last 48 hours. I warned then that that legislation was going to run into difficulties, as it abused women's rights, and I'm going to say that right now about this legislation. We have an opportunity to correct it.

But my presence here today—I was charged with the responsibility of doing a responsible job with this legislation, not some exercise with a time watch or a timekeeper. For the record, I'm not planning any press conferences today, so I understand the importance for Ms. Churley of getting this resolved today. That's a matter of her record. That's the way she approaches it, and that's fine. I wish to make sure this is done properly and thoroughly.

On this section, I have a letter from Holly Kramer, who has supported both Ms. Churley and the government to proceed with key elements of this legislation. But in her letter to me she has expressed concern about the area dealing with crown wards and their treatment.

Mr. Chairman, this amendment creates an exemption for former crown wards. This exemption is put in place for a whole host of reasons, which I spoke to earlier. Part of the reason for that, of course, is that there are some cases of adoptees who were extricated from extremely abusive situations. Mr. Parsons has spoken eloquently in the House about children who are victims of fetal alcohol poisoning and other abuses by the birth mother during the pregnancy.

Many organizations—and in particular I want to indicate that the London coalition of adoptive parents has presented a very strong and cogent argument that we find some accommodation to protect the rights of crown wards. They have indicated in a letter—and I'll be straightforward: This amendment came out of a concern they expressed. They support it. They might even suggest that it be amended slightly to say that crown wards be dealt with where the safety and well-being of the child or adoptee is in jeopardy. But it's the principle that we need to ensure that these children have certain rights that are upheld here.

So the amendment says, "Despite subsection (3), the Registrar General shall not give the applicant the information described in subsection (1) about an adopted person who was a ward of the crown before being adopted, unless the adopted person has registered a notice authorizing the release...."

Again, the government bureaucrats here have not given us any words of comfort to describe for us at what point a child who was sexually abused—I have a letter from a family where the child still bears immense scars from the torture of the birth-parents. Those birth-parents objected to the CAS taking the child as a crown ward. The child's life was threatened; there have been efforts by the family to connect. So these families are pleading with the government and this committee to ensure that crown wards whose safety and well-being were put in jeopardy be given this veto. We've not heard at what point we start telling a child that they were tortured and about the nightmares they have. Who's paying for the therapy to make sure they can move toward a state of wholeness and are able to understand these issues? You just don't, all of a sudden on their 18th birthday, say, "We forgot to tell you that you were severely tortured, and your father is coming to see you." In my view, here is a clear case, and not an uncommon case.

That's not to say there are cases of crown wards—and that's the point the London coalition of adoptive parents is stating. As Mr. Parsons has stated, there are men and women who bring a child into the world who, out of love, decide that that child should be put up for adoption. There's no challenge here; they just feel the child would be better served to be raised in a family that can better care for it. So perhaps having all crown wards may not necessarily be the answer. I worded it this way because it's the only safe way of clearly covering all the most severe cases of sexual and physical abuse and torture, that those children are not forced into repatriation with their parents, in particular against their wishes.

We have lots of documentation from professional therapists and psychoanalysts who have indicated how damaging this will be to individuals. For people who are victims, the first victim is their ability to empower their own decisions, and here we have the government literally taking their right to a decision away from them. I guess the question I raised with staff at the time was the difficulty in differentiating between those crown wards whose safety and well-being was threatened and those crown wards who were non-controversial to the extent that there aren't these deeply rooted psychological problems.

As you know, Mr. Chairman, we have not really had an explanation of what support mechanisms will be provided. The adoption records department in the province is going to be phased out, so who would have carriage of determining which crown wards who are at risk should have a veto and which would not? I would appreciate the benefit of input from the staff as to how we would implement this kind of amendment.

The Chair: Does the staff have any answer to the question? Otherwise, I'll go to Mr. Parsons.

Ms. Marla Krakower: If you refer to 211, the government motion that has already passed, with respect to the prohibition against disclosure where an adopted person was a victim of abuse, the definition of "abuse," as we discussed at the last meeting, will be dealt with through regulation. So in terms of your question about how it would be implemented, there's still quite a bit of consultation that we need to do in terms of speaking with the stakeholders around that definition.

1020

Mr. Jackson: I'm led to believe, then, that for three and a half months you've had a section in an act which refers to issues around child sexual abuse and at-risk, but you've not had any discussions as to how we would determine what constitutes that or what wording in which files would be used?

Ms. Krakower: The children's aid societies would need to be involved with us in terms of developing that process.

Mr. Jackson: I've asked the question in the past, and forgive me for asking it again: Will all children's aid societies' records be open and accessible to any applicant who is seeking information?

Ms. Krakower: In this context, the children's aid society would be looking through when a birth parent came forward and asked the Office of the Registrar General for identifying information about an adoptee. In this instance, the children's aid society would go back and look at the records for that particular adoptee. So that particular adoptee's file would be examined by the director or a delegate of the children's aid society to determine whether there was abuse.

Mr. Jackson: For the record, does the 18-year-old who was the victim of abuse have access to their records?

Ms. Krakower: If there is a finding of abuse, a flag will be put on the adoptee's file at the Office of the Registrar General. If the adoptee wants to go back to the children's aid society, upon seeing the flag, and get a sense of why that flag was put on, he or she will be able to do that.

Mr. Jackson: I'm asking you a direct question. Do they have access to their file, not access to the information? That's what I'm asking. It's a legal question. I'm 19 years old; I was a crown ward; I was put up for adoption; I now want to look at my CAS file, to know what was written in that file about my state as a six-month-old.

Ms. Susan Yack: If I could refer you to page 211, 48.4.4(16) provides that "If the local director determines that ... the adopted person was a victim of abuse ... the local director" would give the adopted person the information the local director considered in making the determination.

Mr. Jackson: OK. Then I'm going to stand down this section until I can get a legal opinion. I want an answer to that question. What I'm hearing is that I'm entitled to the information. I want to know if I have the right to look at the record.

Ms. Yack: It provides for receiving the information. I'm not sure what else you're asking, if—

Mr. Jackson: It's a simple question. There is a file. It looks something like this. It's usually brown. It has a name on it.

Ms. Churley: That's rude.

Mr. Jackson: I've asked her three times, Ms. Churley—

The Chair: If I may be of assistance. If I understood the question properly, he's asking if somebody is 19 today and he or she wants to look at the file, with what we have in front of us today, approved, can he or she get to the file, yes or no? Is there an answer?

Mr. Jackson: Access to the actual file.

Ms. Krakower: Provided that third-party information would be severed, the information would be obtained.

Mr. Jackson: Who makes the decision, the director at the children's aid society or the director of the appeals panel who is in the process of mediating the request for a veto?

Ms. Krakower: Who makes the decision about whether the person can view the files—

Mr. Jackson: Who sanitizes the file?

Ms. Krakower: It would be the children's aid society. They have custody of the file.

Mr. Jackson: So we're not allowing the crown ward, who's now an adult in Ontario, to have a look at the actual file.

Ms. Krakower: No, I didn't say that; I said that third-party—

Mr. Jackson: Are you saying they can sanitize the file? Any of us who have seen freedom of information files know that you can black out a full page.

Ms. Krakower: What I said was that third-party information would be removed.

Mr. Jackson: What do you classify as third-party information?

Ms. Krakower: Information about the adoptive parent or other parties.

Mr. Jackson: OK. This is getting weirder. Give me an example of the kind of information that an adoptee would not be allowed to have about their birth parent.

Interjection.

The Chair: Mr. Parsons, if you don't mind answering that question, would you, please?

Mr. Jackson: Any help would be appreciated.

Mr. Parsons: I'll answer that specific question first, but a file on a particular child would contain information that truly is, some of it, third party. I can appreciate the fear that things be expunged that shouldn't be, and I know that, because we did, in opposition, freedom-of-information requests that brought us back documents from your government with everything but "the" and "it" blacked out.

But in the case of children's aid files, many of the instances of abuse come because of an allegation or a reporting by someone who is assured that they will be anonymous. Without that assurance, they perhaps would not have made the call to CAS. So they've been guaranteed that it be anonymous, and the agency then just doesn't simply find the person guilty but does an investigation and pursues it. I think it's absolutely important that we continue to assure anyone who wishes to report child abuse that it be anonymous. Naturally, the agency may very well have their name and phone number in that file, but that must not be shared publicly.

Similarly, for the adoptive parents, when they apply to adopt there are references that come from community and family members. Some of the references may be good and some may not be, but again, the assurance is made to those who do the references that it will never be disclosed publicly, because we want to encourage an open frankness on the part of the people providing the reference. They would have to be excluded. That would be an example of third-party information.

I can tell you that there are very, very few children who have been abused who don't know they've been abused. We have fostered teenagers, we have fostered two-year-olds who knew that they were abused. This was not an amazing revelation to them.

What I do find fascinating about the dialogue now is the inference that this bill may possibly allow contact to

be made between the abuser and the adult adoptee. Folks, it's happening now; it's happening in a totally unstructured, out-of-control way now. We have fostered a number of children who, when they turned 18, the abuser then found them, because there's no legal mechanism to prevent it. This bill actually puts in place a formalization that provides increased protection rather than less protection for that individual.

The desire on the part of birth parents and on the part of adoptees to find each other isn't a result of the debate on this bill; it's a result of them being human. This is happening now. We're playing games if we think that there's a world out there now where everyone is waiting for this bill to go through to start to search out their loved one. It is something over which they have no biological control, I would suggest. It is indeed a natural action. Here we have a bill that will bring some structure, some protection to it.

There was an inference, and it was just an inference earlier, that this bill was delayed over the summer months because the government needed to make changes. I would counter back that this government was prepared to pass this bill back in June, and I believe that the third party was of the same agreement. This bill has, for a number of reasons, been delayed by the stances of some members of this committee. In the meantime, I think we need to remember that we have individuals out there, particularly older adoptees, who know that the clock is running on the opportunity that they will have to meet their birth parents. There are people who have contacted us, there are people in this room who are my age, who know that if they're going to meet their parents, every day presents one less opportunity for that to happen. I think we must never forget who we're doing it for. This is not a paper exercise. This is not a bill to debate, to win media points on. This is a bill that was driven by our constituents in each and every riding in Ontario who made an eloquent and realistic case.

1030

The protection of adoptees that this bill provides for is addressed to adoptees who need protection from something. I appreciate the kind comments made about my passion for child protection.

The references made to natural parents who abused their children by drinking alcohol: I've never used the word "abused" for mothers who consume alcohol during pregnancy. I am somewhat offended by that. I don't consider it child abuse when an individual performs an act which they do not understand to be—much of the effect on unborn children takes place in the first 20 or 30 days. Those parents did not intentionally abuse their children, and I would suggest that the child does not need protection from that individual. So I am offended at the word "abused." My mission on this has been to make them aware, because I continue to believe that if you give people the right information, they will make the right decision.

This amendment that, hopefully, we're going to debate, to me demonstrates a lack of the understanding of

the word “crown ward.” I would suggest—and I don’t have numbers—that almost every child who has gone through the CAS for adoption has at one stage been made a crown ward. It’s a process that in fact makes them available for adoption.

In this group of crown wards are children who have been truly loved by their birth parent, but who recognize that at that stage in life they are perhaps not in a position to provide care for that child. I can think of instances of young mothers—I’m talking 13, 14 years old—who have said, “I cannot provide the care and the love that this child needs.” The adult adoptee doesn’t need protection; quite the opposite.

The word “crown ward” is far too encompassing. What this bill focuses on is providing protection for individuals who have suffered abuse and need continued protection. This amendment, in fact very coyly but effectively, would serve as a roadblock to prevent the vast majority of parties being able to find each other. I certainly cannot support this. We need only to provide protection for individuals who need protection, not the general population.

The Chair: Thank you, Mr. Parsons. Ms. Churley, you want to say something at this point? Then I’ll recognize Mr. Arnott, and I’ll go back to Mr. Jackson after that.

Ms. Churley: Yes, I do. I want to speak to this amendment and some of the statements Mr. Jackson made.

First of all, let me say that I think we’re back into the situation, and we’d better face it, where we have the Conservatives filibustering the proceedings. I expect we’re not going to get very far, and I guess we have to acknowledge that up front. What I would prefer to do would be to go through each amendment in a systematic way, respectful to the staff and to each other as we go through it. I would prefer if we proceeded in that way, but it’s pretty clear we’re not going to be doing that. So I, therefore, am going to take this opportunity to say a few things in response.

Mr. Jackson says that he is standing up for women’s rights. I just want to say to Mr. Jackson that I will not take any lessons from him about standing up for women’s rights, particularly after what his government, the Harris government, did, when they were a government, to women and children in this province. So don’t talk to me about women’s rights, Mr. Jackson.

Secondly, this bill is all about women’s rights and young adults’ rights, for the young adults to know who they are, their biological background, their health information and, yes, in some cases, adults who were crown wards—and it’s a very small minority, as Mr. Parsons said, who actually may have come from abused homes. Yes, we all want to protect those people and those children. But I’ve got to tell you, if you look at any research that has been done, people carry demons when things have happened to them when they were young. For the very small minority, as Mr. Parsons said, who perhaps didn’t know, and they carry these demons

around—they don’t know where they come from and they have problems and they don’t know why—it sure as hell helps them to find out what happened to them, to help them move on with their lives.

I would also say to Mr. Jackson and to the committee, those concerns that are being raised, and I say it over and over again, I have—and there are experts with us here today—file after file after file after introducing such a bill as this five times in the Legislature. There is evidence across jurisdictions across the world that deal with these particular questions: England since the 1970s; Western Australia recently changed its adoption disclosure laws, which had a contact veto and a disclosure veto. They have found out after research and studies that they don’t need the disclosure veto, and they’ve just officially removed it.

I would say to people who are expressing those concerns that if you look at the body of research, you will see that the evidence is there. We’re far behind, which is too bad, but we’re lucky in that the evidence is there; the questions are answered. If you look at that evidence, you will see that the concerns that you’re raising have not been a problem in those other jurisdictions; on the contrary.

Mr. Jackson mentioned sharia law and faith-based arbitration. It’s not part of today, but he’s bringing it up in terms of women’s rights. Just to set the record straight, I think it’s important to say that the NDP did not bring in faith-based arbitration. It’s been part of the Arbitration Act since its inception in Canada and Ontario. The NDP followed on Mr. Ian Scott’s beginning of the federal government’s harmonization of the Arbitration Act across this land. Faith-based arbitration has been allowed since, I think, the 1920s. I’m sorry that I’m going into that, but Mr. Jackson raised it and was allowed to get away with it in this context and I thought I would set the record straight. In fact, Quebec was the only province at that time that opted out. All of the other provinces, including Ontario, just harmonized the Arbitration Act—just to set the record straight.

Finishing up here, I would really urge us to move on and go through these amendments one by one. In a democracy we can do that, and then we can go into the Legislature, debate it and have a democratic vote.

The Chair: I recognize Mr. Arnott next, if he wishes to speak. The only thing I want to say before recognizing him is that I have been very flexible in allowing all the members to speak their minds. Of course it’s going to take longer, but if you disagree, let me know; otherwise we will continue as we have.

Mr. Ted Arnott (Waterloo–Wellington): I actually plan to be brief, Mr. Chairman. Given the fact that this committee has not sat for quite a number of weeks because of a decision of the House to put off the continued discussion and deliberation of Bill 183, I think it is perhaps appropriate that we’re having these preliminary comments in the context of this amendment that was put before the committee before the summertime.

I would certainly indicate my interest in this motion that Mr. Jackson has presented. In following the dis-

cussion, I think some of these are important points that have been raised by all sides. I'm a permanent member of this committee, but I've been subbed off on a couple of occasions because another one of our members, Mr. Sterling, has a great deal of interest and expertise in this issue and has wanted to participate as well. But I've tried to follow it as best I could.

The comments of the privacy commissioner, which we haven't talked about yet in today's sitting, are issues that we need to keep in mind, I think. Her continued interest in this issue and her statements are issues that we need to consider. She is the officer of the Legislature who is responsible for the administration of privacy issues, and I would hope that no member of this committee would suggest that her views are irrelevant. As we know, she has called for the idea of a disclosure veto to be included in this bill. It's something that I think we do need to consider over the next couple of days in a very serious way.

I was rather surprised to hear one of the government members say in a rather flippant way that the government had achieved perfection with the amendments that had been put forward over the last number of months and that, even though there's been ample opportunity for the government to reconsider some of these issues, they feel that they've achieved perfection. I would beg to differ, I'm afraid.

In response to one of the questions that Mr. Jackson put to the staff and to the government members about the issue of the children's aid files and access to them, the answer was brought back from the government member that in fact people who inform on issues of abuse deserve privacy. Obviously, that's something that should be expunged from files if it's going to be presented to anyone. It made me think of the crux of this issue. Of course, there was implied, or in many if not all cases, guaranteed privacy when women gave up children for adoption years ago, and certainly the government has made a decision that that promise or that commitment or understanding is meaningless now and has therefore brought forward Bill 183.

I'll be supporting this motion.

1040

The Chair: I'll go back to Mr. Jackson.

Mr. Jackson: I propose an amendment that subsection 3(1) be further amended by adding after the word "crown" the words "where the safety and well-being of the child adoptee is in jeopardy." It's the one that's in front of us, the very first amendment on subsection 3(1). It's section 6, subsection 48.2. It's the one, "Exception: former crown wards," and the words to be inserted are, "where the safety and well-being of the child adoptee is in jeopardy," before being adopted.

The Chair: We need it written down, if I could have it. Give us each a copy. Do we wish to continue debating it, or do you want a few minutes' break until everybody—

Mr. Jackson: I think it's clear. It's not a complex amendment. Mr. Parsons referenced that it embraced all

crown wards. In my preliminary statements about this amendment, I indicated that I was casting too wide a net to give an automatic exemption. I support the principle of a veto; I honestly do. I'm personally not having as much of a hard time with retroactivity, but I'm not the minister. At this point, I'm merely trying to protect a cohort of individuals who, through my personal experience, go through enough trauma without having to be forced to go before a tribunal.

Again, this good counsel comes from a variety of quarters: several legal minds who have written to this committee, also the London coalition of adoptive parents, who presented before the committee and then made additional statements. Just briefly, here's what they had to say in their letter to us:

"As you may recall from our personal stories presented during the recent public hearings into this bill, many of our children have come into care as a result of being apprehended. Many were sexually, physically or emotionally abused. Many were neglected and abused in utero by exposure to drugs or alcohol. Many, unfortunately, had ringside seats to the violent acts birth parents inflicted on one another. These are very different types of crown wards. These are the adoptees who may need protection from contact initiated by a birth parent."

They go on to give other examples.

Again, I'm very concerned. Mr. Parsons has shared with us the fact that the person who discloses the abuse, the person who contacts the children's aid society, if it's one of the birth parents, is protected. Now, they're not protected because of any inherent right to privacy; they're protected from litigation. This is a legal issue involving the children's aid society and the documentation that occurs in these documents.

I feel very strongly about the issue that these reports will be vetted for the protection of other individuals who in fact were responsible for the children's aid society making decisions about their adoption. It seems hypocritical, and it seems ironic, that we, in this legislation as it sits, are more concerned about protecting the individual who caused the adoption and are not concerned about the privacy rights and the right to access to information for the victim of that violence, in the case we have before us with crown wards, where the safety and well-being of the child adoptee is in jeopardy.

I wish the committee could consider this further, because I think we are opening up emotional scars here without the appropriate support. This organization and many others, Holly Kramer included, has recommended that we provide for counselling in these instances. Again, I've put forward amendments in this regard. I caution, I warn and I invite the members of the governing party to be sensitive to this issue, that people should have the right of access to counselling. An 18-year-old is going to be told, maybe for the first time in their life, of the horrendous medical records, why they spent the first year of their life in a hospital recovering from broken bones, and they need counselling before their assailant, who may be their father or mother, shows up on their door—

step. There is a misfit that suggests that the children's aid society somehow is going to be monitoring an adoptee. They're not. They have a file that's been sealed and put away, and somebody 18 years later is going to dust it off, open it up and have a lawyer look at it. The average CAS in this province has anywhere from three to eight lawyers working either on their staff or in their immediate access pool. This is an extremely litigious process.

In this instance, the viewing is not to determine the sensitivity of the applicant to this information, because the CAS wouldn't even meet the person, wouldn't be interviewing them, wouldn't be asking, "Have you received counselling? Do you know?" The trigger will be that the CAS will be given a notice that a birth mother and a birth father want the records of their child. There is a consequence to that. There is no mandate for the CAS to make sure that the now 18-year-old has received sufficient counselling to be in a position to exercise this limited right to come before a tribunal of strangers and argue, "Do you know what? I really don't want the man who nearly killed me looking at my records. I don't want him to know who I am. I do not want him to disturb my adoptive parents, who are now senior citizens and still living in the same house from which they adopted me."

I don't think this has been well thought through on the part of the government in terms of how this is going to work, and I remind committee members that the trigger for this is the fact that the government made a minor capitulation to the legal principle that a veto must exist for persons who have been sexually abused and who are at risk. It's worthy of note that the minister has put on the record publicly that there is concern that there may be fatal consequences to certain disclosures, and with that knowledge there had to be some mechanism.

So now that we've embraced this narrow window of a veto—I see considerable flaws in it; the government has said it doesn't know how it's going to work—we are crafting who can queue up and who can be eligible for this, and I think we do a great disservice to crown wards, in particular those crown wards who were the victims of these kinds of abuse.

The CAS will act predictably and protect its legal backside. I don't fault them for that; that's the way the system exists today, and this legislation isn't going to change the attitude of the lawyers at the CAS. But they will vet those files to determine that no one can get sued, in particular the staff in their employ. But the purpose of this is to protect the individual who feels that they would be emotionally scarred should they be exposed to an automatic access. I'm not going to debate this whole issue of no contact; that will come up later. I don't think it will work. Anybody who's had anything to do with women who have been stalked or who have had the experience of sexual predators knows that peace ordinances do not work in this province, that predominantly male police departments don't enforce them. That is a fact of life.

1050

So if the effect in law is that they don't work, then we have to be very careful—

Ms. Churley: On a point of order, Mr. Chair: Sitting here as a birth mother and with adult adoptees and birth mothers sitting in this audience today listening to this, to have people from the adoption community from all sides be compared to criminal stalkers is absolutely outrageous and beyond the pale. I would ask Mr. Jackson to please be careful what he's inferring here and to withdraw that accusation and comparison.

The Chair: It's not a point of order, but the question has been placed.

Ms. Churley: Let's be civilized here.

The Chair: Mr. Jackson, do you have any comment on the question? Otherwise, proceed.

Mr. Jackson: Mr. Chairman, now that I've been asked to comment further on it by Ms. Churley, I would indicate to her that if she had taken the time to read the letter from Bruce Pardy, Associate Professor, Faculty of Law, Queen's University, making reference to this issue of whether or not a contact veto has any effect in law, it speaks very eloquently on legal grounds to that issue. Richard Owen, the executive director of the Centre for Innovation Law and Policy at the University of Toronto Faculty of Law, raises the same issue.

Ms. Churley: I have asked you to withdraw it.

Mr. Jackson: You may wish to attack these people, and I know you've attacked Ann Cavoukian, the Information and Privacy Commissioner of Ontario, who has raised a similar concern about its net effect on vulnerable individuals. So I won't apologize for it. In a free and open process, which I believe the Chair is still managing here, and I thank him for that, I am able to read into the record those learned presentations that form the complete body of information that guides this committee in making its decisions. We should be guided by pre-eminent legal concerns. I wish Ms. Churley hadn't interrupted because I said I wanted to set it aside. But if she wishes me to have a fulsome discussion on the issue of contact veto, then I will.

Ms. Churley: You're just being silly.

The Chair: We know this is going to be a very hot day. We heard comments on both sides; we heard the answer. Mr. Jackson, you still have the floor; then I'll recognize Mr. Parsons.

Mr. Jackson: Thank you, Mr. Chairman. I've read into the record the comments from the London coalition of adoptive parents. I believe I've referenced, without going into a lot of detail, the Ontario privacy commissioner, and indeed, all the privacy commissioners across Canada who have expressed concern and have highlighted this amendment as a necessary amendment to protect the most vulnerable. So I would encourage members to support this amendment to the amendment.

The Chair: I recognize Mr. Parsons, and then Ms. Churley, please.

Mr. Parsons: I'm a long way from the most experienced member on this committee, but I think I do understand the system now, which is, it's necessary for me to speak in order for the official opposition to then run another 20 minutes to fill the time. The object is, I

sense from the official opposition, to simply delay this bill going through. Perhaps I'd be happier if we'd be more honest and rather than have all these people come in and make the trip to sit here, if the official opposition simply said, "We're not going to co-operate; we're not going to do it." But it wouldn't get the same amount of media as this.

I struggle a little bit with the passion for child protection when Mr. Jackson's government, while on his watch, cut CAS budgets, all money for protection programs for children's aid societies' activities were eliminated and the adoption disclosure unit was drastically underfunded. I'm more concerned with what people do than what they say, and I have difficulty with the passion that I've seen develop this morning for this.

This amendment is a great amendment because it actually was put forward as a government motion and passed, which provides for protection for adoptees who need protection. It's in place. The committee has already carried motions 8 and 10a. So this is redundant and absolutely pointless. The only purpose that this thing achieves, whether it's intended or not, is to delay it a little bit longer. But I again remind them—from the government viewpoint to the official opposition—that every day this bill is not passed, the unauthorized contact that they're so concerned about is taking place. The odds are very high that somewhere in the world today someone is showing up—we have had that. We have had our foster children turn 18 and the abuser show up at the door, and you know what? They broke no law. They did nothing wrong. They did nothing wrong to appear at their child's school, or to encounter them in the street.

At the moment, it's a Wild West out there. We don't seem to think of it from that viewpoint, but it is totally unstructured. This would actually put in place a provision that that can happen, and that if someone were to show up, they will have broken a no-contact veto; they will have broken this law. So if you want to truly protect the children—because I can tell you, from having watched, how difficult it is for an 18-year-old girl to open our front door and find her abuser standing there. The minute she turned 18, the current law provided no protection from that happening—no forewarning, no nothing.

Chair, I urge the official opposition members to rethink the strategy of stretching this out for publicity and to think about the individuals out there, both those who need our protection and those who need our support, because just as the abuser showing up at the door is emotionally difficult, the foster children and the individuals we've spoken to who have met their birth parents have found it emotionally charging and positive. It has enabled them to not go through life with questions like, "Did they not love me?" because that's got to haunt some of them. For thousands and thousands of individuals, this will give a freedom and an answer and a new path in life.

All of the games we're playing simply block the people in Ontario who want their fundamental right of knowing who they are. This debate, as it's happening today, simply continues to remove or blocks the rights of

far too many people. One is too many; we're talking thousands. I am disappointed that we've come back together, after having had two and a half months to get many of these questions answered, and we see an amendment come that is a replication of a motion that has already been passed by this committee.

Ms. Churley: I would concur with Mr. Parsons that if we're not going to take this seriously and get through the amendments, it would be better if the official opposition would just be clear and honest and say, "We're not willing to proceed with this," and go back to the House leaders and try to find a process that will work, because this is wasting all our time. I think it's extremely disrespectful. I know all parties play games at many times over bills that we feel strongly about, including Liberals, Conservatives and NDP, but this bill is a long time coming. It's not new. As I said, it's very similar—although I have some amendments to improve yours so it's more like mine, too. There are a few problems. I want to get to them, though, in a serious way.

Mr. Jackson has supported this in the past—in fact, all my bills which didn't have a disclosure veto at that time. It has been having a huge impact on people's lives for many, many years. It's not new; it's just that it's a government bill now. Before, it was a private member's bill. We had committee hearings, remember? Mr. Parsons was there. A lot of those questions were dealt with at that time. We went through the committee hearings. We had deputations.

This issue has been before us since the 1970s—the Garber report recommended disclosure reform at that time—so it's not new, and it has an impact on so many people's lives that it really is not fair to be approaching it in such a disrespectful way. I would therefore ask if the Tories would consider, given their position, just telling us if they're not willing to go through the amendments so we can find another way to deal with this.

1100

I want to talk to this amendment. First of all, I'd like to reiterate, one of the problems is that many, many children become wards of the crown before they're adopted. They don't come from abusive situations but, as in my case, come from situations where they're made wards of the crown and then adopted. It's a process that you have to go through. Therefore, if this amendment were adopted, that would mean that most adults today who were adopted under that system would all be caught in that particular amendment.

The other thing I want to say, and it's absolutely critical and I'm going to put it on the record now for other amendments which will come forward, and Mr. Parsons has referred to it repeatedly, is the contact veto. Let me say again, having researched and been one of the birth mothers and been around this issue for a very long time: When a birth mother finds the location of her son or daughter, or an adoptee finds the location of his or her birth mother or father, after so many years perhaps of searching for each other, one of the things that happens is that the last thing either party wants to do is do some-

thing that might alienate the other party. People so desperately want it to work out that if there is contact, they want to make sure—and I certainly went through that process with my son, although, as Mr. Parsons said, there was nothing stopping me, as soon as I found out where he was, from just knocking on his door. But I didn't do that. I first wrote him a letter to make the initial contact. He wrote me back; we wrote to each other for a while. He wanted some time—I was dying to see him. I got a photograph, but I waited until he was ready for that contact. And in some cases it is true: Some people don't ever want the contact. As we keep saying, this bill is not about legislating relationships; it's about legislating information, people's human rights to have information about themselves. In terms of people perhaps stalking each other in a criminal way, one of the reasons why it has worked so well in all jurisdictions that have a contact veto is that people just do not stalk each other. There's a very respectful process that people go through.

The thing that I want to put on the record is a recent alert for birth parents that came out from the privacy commissioner. It says, "Adoption Identification Alert." If you look at this, you will see that it proves what I and the adoption community have been saying all along. In fact, it was we who disclosed this information in a press conference, and that is, birth mothers were never officially promised confidentiality. Maybe some social worker said, "Oh, you can go away and forget about it." What a joke that was. The fact is that there was never an official confidentiality promise.

The privacy commissioner talked about not allowing retroactivity. We made it clear that in fact birth mothers'—and fathers', in some cases—but mostly birth mothers' surnames were on the adoption order given to the adoptive parents. That was in the 1960s. I know that my son's parents had my name. It's a very unusual name, too. If he had wanted to find me at that time—he was seeing my name in elevators. I was the minister responsible for elevators at the time; remember? "Marilyn Churley" in all the elevators. He told me after we reunited that he used to see that and wonder, "Could that be my mother?" because it's a very unusual name. But he thought, "No, I couldn't have a mother whose name would be on elevators in Ontario." He knew my name. He was born in 1968. Therefore, some of the issues raised around the rape victims by the Conservative Party and others, who would be, by now—we're talking about people born in the 1950s and 1960s—a lot of those people would have access to their mother's surname anyway.

The privacy commissioner wasn't aware of this. Most people weren't aware of it. We alerted everybody to that to prove that it is a myth that there was confidentiality. There never has been. It has been a mixed bag. Even after some areas stopped using the surname, some didn't, and she acknowledges that. Then, somebody who says she doesn't believe in retroactivity in this bill is going back to people retroactively, saying, "After our research, it was we who revealed it"; but after their research, they've

discovered that there's an inclusion of the birth name in the adoption order and they're now putting out an alert—this has been out there for years—"Consideration of harm arising from disclosure."

My heavens, these names have been out there ever since the day these children were given up for adoption. I have to say that those who were seriously looking—particularly the adult adoptee, who in most cases would have access to those names and would have knocked on those doors of the birth mothers, who are now in their 70s, who may have been a small minority, who may have been a rape victim—would be finding them by now if the persons wanted to find them, because there's never been confidentiality; never. The reason we need this bill is that a majority of people right now are finding each other anyway, as I did with the help of Holly Kramer through Parent Finders. With the Internet, with the surnames on adoption orders, with the searches that are going on, people are finding each other.

For whatever reason, there was a period of time when adopted children were given a number on an adoption order, and that was a dark period in our history, because there was a minister, as I understand it and have been told, responsible at that time who was opposed to adoption disclosure. This bill is necessary to help those. Actually, for a brief period of time, some in rural areas were just putting a number on an adoption order, or, for whatever reason, a very common name, or the person didn't have the money or the ability to hire, as I did, a private person to look with the identification I had.

That's another thing. I found my son through so-called non-identifying information. Without names and things attached, there was enough information. I had enough money to get somebody to do the search for me. I'm going into great detail here because I think it's very important to set the stage to make people understand that people are finding each other in droves. This legislation is important for those who by now are a rather small minority of people who cannot and need the assistance. Furthermore, it's just a basic human right for people to be given access to their own personal information.

Finally, therefore, I put this on the table again: There are those who believe there shouldn't even be a contact veto, because in normal circumstances there's no contact veto to stop an abusive parent from showing up at any doorstep, even if the child is not officially adopted, or any other. There's no official legal way to stop people from contacting each other unless there are serious criminal problems. There are people, therefore, within the adoption community who believe there shouldn't even be a contact veto. But we've got the contact veto in to protect those who we all believe need to be protected. We've got that there, and it works. It is working in other jurisdictions. In fact, given everything I just said about the ability, and the access that's already out there, this contact veto would improve the situation for those who believe there is an issue around unwanted contact which doesn't exist right now.

Therefore I would say that this amendment before us, given all of the body of evidence that we have, is not

needed. We need the legislation to pass, and we need the contact veto to deal with the concerns being expressed by the official opposition.

The Chair: Thank you. Is there any further debate? If there's none—Mr. Jackson?

Mr. Jackson: Again, I said I don't wish to debate the contact veto at this time, although I listened carefully to Ms. Churley's 14 minutes on the subject, as always.

Ms. Churley: You're one to talk about 14 minutes.
1110

Mr. Jackson: You've actually spoken longer than I have since the Chair hit the gavel.

Interjection.

Mr. Jackson: Well, I don't think that's really appropriate.

The Chair: Mr. Jackson, you still have the floor.

Mr. Jackson: Thank you, Mr. Chairman. I think the member said I'm a disgrace. Do you have control of this committee?

The Chair: Ms. Churley, if you said that, I'm sure you will want to withdraw.

Ms. Churley: Oh, absolutely. I withdraw. No problem.

The Chair: Mr. Jackson, sir, you have the floor.

Mr. Jackson: Thank you. I wish to go back to this issue of access to the CAS files. I have a note from Holly Kramer, who expresses concern about having access. I'll ask a general question as it relates to this amendment: Do we retain, anywhere in this legislation, the right of access to the files in the CAS? If you could point me to that section.

The Chair: The section is?

Mr. Jackson: Either in amendment, or one that's passed; either one.

Ms. Krakower: It's in 211.

Mr. Jackson: OK. I have the page.

Ms. Krakower: It's three pages into that. It's subsection (16), under "Information for birth parent, adopted person."

Mr. Jackson: Very good. Can you explain to me why you're only making the files available to those who are the subject of abuse, and not to Ms. Churley or Ms. Churley's son? Would someone help me to understand that? The bureaucrats are looking to the politicians for an answer here.

Mr. Parsons: you're the expert on the CAS. Do you not feel that everyone should have the right to this information, not just those who were victims of abuse?

Mr. Parsons: No, I don't. I have no sound professional opinion. Social work is not my field. I'm an engineer who has dabbled in it as a foster parent. But I know that in the foster children's records, there is information that the foster parents may have recorded, for example.

I can think of many, many cases where the foster children came to us, and I'll be blunt. There were a number of children the agency has asked us to foster, and a week or two into it I've said to my wife, "This is a mistake. This is more than we have the expertise to deal

with"; and a year later we've said, "What a privilege we've had of working with this child." Were you to look at the record that we wrote for the agency, believing it was between us and the agency—it would be very discouraging, I think, for that child to read it. But I also know, as a foster parent, I wrote it not for public consumption, not for that particular child.

The records by nature, if they're going to be productive for the foster child, must allow people to be very open and frank in the recording of them. I would suggest that the record of whether a foster parent had a high or low opinion of a child is immaterial to that child. They need their birth information; they need medical information. But to simply open up the file, I don't see that as productive.

The current practice now through the adoption disclosure is for the CAS to provide as much information as they can. But some of these files have been three, four and five inches thick. Given the nature of it, it would be like making a person's medical files open to the general public. Many of these files also contain information on others. They may contain references to other foster children who are in the home but in fact are not siblings or related.

I guess my initial reaction is, why? I have never perceived a pressure. Certainly the adoptees I've had contact with know specifically what they're searching for. I have no recollection of them saying, "I simply want my file open." They want the information in the file, not the file. I don't see a point in making it open, other than that it has helped to prolong this committee's deliberations by a few more minutes.

The Chair: Any further debate?

Mr. Jackson: I was around in 1987 when the late John Sweeney, in working directly with the adoption community and the David Peterson government, made sure that these rights that were hard fought for on the part of adoptees and birth parents so that they could do the kind of matching that has been occurring in the province for quite some time—it's my understanding that this information is not going to be made available or retained in a central registry, that access to that is a right that some people currently enjoy, and that this legislation is taking it away.

The reason I raised it is that my original motion had a subsection (3.3), which read, "An adopted person who was a ward of the crown before being adopted and who is at least 18 years old is entitled to information in his or her CAS adoption file, and the society shall give it to the adopted person upon request."

I didn't know it at the time, but through my discussions with persons who are helping with these matches, I learned that this was one of the means by which they were able to help: by looking at the adoption records, the licensee records and the CAS records.

But apparently under this legislation—I don't know another way to say it, but I would hope that it's not a cost-cutting exercise to reduce the amount of services that are going to be available to assist adoptees. It's great

to have a piece of legislation that says I'll have disclosure, but if the instruments of disclosure are not readily available—and they currently have them in Ontario; without an unfettered right to access, but they're still available—then we have a problem. Again, I'm raising this because I've been warned by proponents in the adoption community who want this retained and we're not finding it anywhere in the system.

I listened carefully to Mr. Parsons's concerns and I'm still trying to evaluate those. Perhaps he was unaware that that was a right that John Sweeney had given when he did the review back in 1987. It's being removed here, and I just would like an explanation. The bureaucracy passed on answering the question, and I found that passing strange, but they have the right to remain silent.

Ms. Krakower: Perhaps I can be of some assistance.

The Chair: Maybe the staff can clarify it for us, and then I'll recognize Ms. Churley.

Ms. Krakower: There is a provision in the bill that would allow for information to be shared by the children's aid society. It's in section 14 of the bill, subsection 162.3(2) of the act, under disclosure of information by a society, which says, "A society shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed."

Currently, the children's aid societies do provide non-identifying information. It is anticipated, and it has been the policy intent, that they would continue to do so, and the regulations would be fleshing that out with the authority that's provided in the section that I just read.

Mr. Jackson: What about the adoption disclosure registry as the repository of the quantum of information that can come from adoption records, adoption agencies, as well as certain licensee files?

Ms. Krakower: That function will now be taken over, or would be taken over, by the custodian. In the case of—

Mr. Jackson: What's the custodian?

Ms. Krakower: The custodian is referred to in the bill. That's the body that would also be providing non-identifying information and some other functions as well, in terms of the provision around abused crown wards: They have a role in that 211 that we were just referring to. As well, there is another government amendment that will be touched on a bit later that has a role for them in conducting searches.

1120

Mr. Jackson: So are we dismantling the adoption disclosure registry?

Ms. Krakower: The adoption disclosure registry won't exist, but there will be a custodian of adoption information.

Mr. Jackson: A custodian adoption information service?

Ms. Krakower: Just the custodian of adoption information. It's already in the bill. Their authority to provide information is also in that same section that I was just reading. Section 14 of the bill, subsection 162.3(4), also gives the custodian authority to pass along non-iden-

tifying information. It says, "A designated custodian under section 162.1 shall give such information that relates to adoptions as may be prescribed to such persons as may be prescribed in such circumstances as may be prescribed."

Mr. Jackson: But it's not a right as set out in the bill, in terms of access to information.

Ms. Krakower: The policy intent is for the custodian to carry on that same function with respect to providing non-identifying information, as is currently carried out by the adoption disclosure unit. So the adoption disclosure unit would continue to provide that information in cases where people have gone through a private adoption, and the children's aid society would continue to do that where it has been a public adoption.

Mr. Jackson: So where will all the records currently at the adoption disclosure registry go to?

Ms. Krakower: They would go to the custodian.

Mr. Jackson: OK.

Ms. Churley: I just want to comment on this, because this is an area of concern. I agree with Mr. Jackson on this point, and it is a concern that has been raised by the adoption community—both points that Mr. Jackson raised. I think what he was referring to I talked about earlier, and that is the so-called non-identifying information that is made available now to adoptees. The fact that it is no longer going to be provided is really problematic.

Let me give you an example. If you have somebody with the surname Smith, and that person is searching and that person is 30 years old and all they've got to go on is the surname Smith, that's why this legislation is really important, so they can have access to their original birth information. But in some cases it's going to take the combination of the two: the non-identifying information, which gives little clues and hints about what business the adoptive parents might be in or what their heritage is and some other little facts that come together to help locate that Smith somewhere in Canada. They may not be alive any more; they may be living anywhere in the world. It's really critical that that information still be provided. So that's one piece; I have an amendment on that.

The second thing is the access of adoptees to their files. I know in British Columbia and other jurisdictions that the file is available to adult adoptees with certain identifying information blacked out. I'm sure it's a resource problem that was being considered here, but I think it really is critical that we revisit the non-identifying information and the file with certain things blacked out. It has worked very, very well in British Columbia and other jurisdictions.

Mr. Jackson: Is that the NDP amendment?

Ms. Churley: I think so. I'd have to look again now, but I think it is. There is an amendment coming up dealing with it.

Mr. Jackson: Both of us covered off the counselling, but this is the identifying information.

Ms. Churley: Yes.

Mr. Jackson: It's sufficient that it's in there.

The Chair: Any further debate? If there is none, I am going to take a vote on the amendment to the amendment, which, if necessary, I would be happy to read. Otherwise, I'll take a vote.

Mr. Jackson: Recorded vote.

The Chair: A recorded vote on this.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion does not carry. Therefore we go back to the original motion, section 6, subsection 48.2(3.1). Is there any further debate on that? If there is none—yes, Mr. Jackson?

Mr. Jackson: I just wanted clarification from staff, then, that I've worded this correctly: "may register a notice authorizing the registrar general to give the information described in subsection (1) to a birth parent." Is that the appropriate body to provide that?

Ms. Krakower: That's correct.

Mr. Jackson: So the registrar general has the authority to go for the CAS file, or has the file? Or is the registrar general standing in the shoes of the custodian?

Ms. Krakower: The registrar general would have the information, but in the case of knowing about abuse, that would be the CAS. They would find that out through the custodian.

The Chair: I will now put the question. Shall the motion carry?

Mr. Jackson: Recorded vote.

The Chair: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We're going to page 13. It seems that page 12 was withdrawn. Mr. Jackson, the floor is back to you—subsection 48.2(3.3).

Mr. Jackson: I move that section 48.2 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.2(3):

"Disclosure veto

"(3.3) Despite subsection 3, the registrar general shall not give the applicant the information described in subsection (1) if the adopted person has registered a disclosure veto."

The Chair: Thank you. Is there any debate on the amendment?

Mr. Parsons: This is an amendment which in fact totally defeats the purpose of the bill. I guess it's allowed procedurally, but I thought amendments had to be somewhat compatible. This negates virtually every other aspect of the bill. It negates what the community has called for. It negates what I believe is the will of the people of this province, and I certainly cannot support it. It's very cute, but it's destructive.

The Chair: Any further debate on this amendment?

Mr. Jackson: Yes, Mr. Chairman. I do believe it's in order by virtue of the fact that the government has recognized the flaw in its legislation and has created a mechanism where a partial veto can occur. The government realizes—first of all, it's a matter of record that this legislation in its current form, in the absence of a veto, will be the subject of a Supreme Court challenge, and that the bill will be delayed in implementation through our court system. That was eloquently presented by several legal minds and members of the adoption community themselves, for whose benefit they were acting.

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We have received a substantive amount of new information during the intervening period of three months, or almost four months, since we last met. We have had the unanimous legal opinion of every privacy commissioner in Canada, who indicate that a veto is essential to maintain the integrity of our privacy laws. I think it's very clear that a substantive amount of legal thought has gone into this. This is not an emotional issue. Many of the adoption reforms in Canada occurred prior to the implementation of privacy laws in each of the provinces. Ontario is doing it backwards. We're doing our adoption legislation post-privacy legislation, and that obviously has created some unanticipated legal opinions on the part of the government and of others.

However, the overwhelming body of legal opinion in this area leads me to suggest that this isn't just an emotional issue involving women who wish to have their privacy rights protected, who are struggling to determine why the government would jettison their rights to privacy, yet, as has been indicated in previous discussion, the privacy protection of those who have reported abuse, who were engaged in the abuse, or foster parents who may have recorded opinions about the child whom they were adopting—they all enjoy these rights. But somehow we have failed to recognize the rights of the individual who was either the subject of the adoption or the woman who made the extremely difficult decision to put her child up for adoption.

These legal opinions that I've referenced earlier—Queen's University Faculty of Law—each member has received them. They have supported the position and the opinion of Ann Cavoukian. They argue in three specific areas: the retroactivity, which is not before us, so I'm not going to debate that—"the substantive right to privacy versus the procedural opportunity to plead" was the legal definition, and I just want to briefly reference this:

"Pleading one's case to a board in order to justify keeping information secret is not the next best thing to a right to privacy. Instead, it is quite the reverse—it implies that personal information is not one's own, and that it belongs instead in the realm of the bureaucrat, who will decide what should be done with it." That, in my view, and the view of our caucus, is what deeply offends the whole principle of the privacy act in our province. It's not an accident that every single newspaper in the province of Ontario has editorially stated that retroactivity is complicated, but the absence of a veto violates a citizen's right in our province. We are impelled to raise those issues in as strong a voice as possible.

They go on to say, "The right to privacy is a personal right. It does not depend on whether one can justify it to a government official. The reasons for keeping one's personal information to oneself are as private as the information itself." This applies to our medical records; it applies to a whole series of records. We've even heard this morning that there are rights enjoyed in the adoption process by those who aren't a direct party to the process, and yet we would violate these simple principles. It's no secret why Ann Cavoukian, the privacy commissioner, has stated—and I will go further to say that she has engaged in a public forum, much in the way that politicians feel uncomfortable about, but we have had others do it, such as when the environmental commissioner steps out of the darkness of his office and argues that there is something wrong for the citizens of Ontario. In my 21 years here, I have seen many bureaucrats step into the light of public opinion to argue articulately what rights are being abused or what risks society is being put through on the basis of any one or other issue.

I will quote from this letter later on, as it relates to the contact veto. It is the government's argument of "Don't worry; nothing's going to happen." When you listen to the government on the contact veto issue, they only talk in terms of this fearmongering and the risk that people are out there stalking. They're missing the principle that the contact veto still gives to the other party all that information, and that point is made very eloquently in these three legal submissions that the committee has been given.

It simply states that those vetoes haven't worked in other applications in the law, but they are still a violation of a person's right to privacy and their information. So the existence of a contact veto in and of itself may constitute some sort of protection in the mind of the government. You're trying to protect people from a violation of their privacy rights that they may suffer, and there's an acknowledgement in this legislation that they could.

I never raised the issue and I wasn't as aware of it, about the honour killings among certain cultural groups when it's disclosed that they had a child out of wedlock or for other reasons. I didn't raise this. The minister herself raised it in front of the media, and there are legal concerns when the state specifically puts someone, in those rare cases, in harm. The harm here is predominantly the right to the privacy that's being surrendered.

The other document that all members were submitted was a rather extensive document prepared by the privacy commissioner. There are, by my count, over 400 cases of individuals who contacted the office, expressing concern about this legislation. The consistency was that their privacy rights were being violated and that a veto should exist.

These individuals have been characterized by some at this committee table as hardly credible and hardly worthy of consideration simply because they don't, in all cases, attach their name to the document. I can only say that this, in and of itself, explains the importance of privacy legislation in this province. That is part of the privacy rights that they have today. That's what they have, and for any one of us in public life to say, "Well, if you won't put your name to it, I'm not going to acknowledge it or give it any weight or any value"—this is not a court of law. This is not where you can make an accusation about someone and then hide behind the anonymity, and legal consequences and criminal prosecutions occur. There are clearly laws around that.

This is entirely different. This is to say that a person's democratic right to speak to their government is being denigrated by virtue of the fact that they fail to come before the committee. We had some very courageous people come before this committee who said, "I do not want my parent"—or "I do not want my child"—"to know, and these are my reasons. This is very difficult for me to come forward here, but someone had to come forward and speak for this community."

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Much has been said, again, about the issue of the research to date in this area. I, for one, do not believe that a disclosure veto would be heavily used in this jurisdiction, as in any other. I think there is fairly credible research on those numbers and their impact on the affected persons. But there is clearly very little credible evidence on the issue of contact vetoes and how effectively they work. That was submitted to the committee in a paper that was prepared over the summer. That document has been shared with each and every member of the committee—A Review of the Literature on Adoption-Related Research—submitted with a review in the United Kingdom and Australia. I would hope that all members of the committee had an opportunity to examine it. Why? Because it raises serious questions on the defence that you must support a contact veto because it will work. Clearly, this evidence doesn't bring you to that full conclusion.

This is a very important motion. It's probably one of the most important motions. As I've said on the record, I'm not having as great a difficulty on the retroactivity of it. Ms. Churley knows I worked alongside her on adoption legislation on four separate occasions over many, many years. I support the principle, but I believe fundamentally that, in this province and in this country with privacy rights as they are, my medical information is as important to me as those decisions I made about giving up a child, or those decisions that I make about protecting

my mental health from someone who so severely impacted it that even at age 18 I'm still suffering. They have the right to be protected from that, just as they have the right, armed with the knowledge of their medical information, to protect themselves as well.

I just would have hoped that more members of the committee would have looked at these submissions that were made over the course of the summer. I was a little dismayed that the minister spoke to the media over the weekend as a precursor to these hearings, saying that under no circumstances would there be amendments in this area. Those signals were truly unfortunate. They are her right, as the minister, to provide those kinds of parameters and guidance to her caucus. However, I believe that we are going to get into nothing but trouble because of the legal statements that have been made, the legal challenges that are to come. I believe that what will be challenged will not be the retroactivity of it, because several provinces have not sustained any challenges with retroactivity because they retained the veto. Some provinces have approved full disclosure on a go-forward basis. That is not being challenged. But this clearly will be challenged.

I want to be able to put on the record that these privacy rights are of paramount concern. I would not willingly undo one piece of legislation, which Canadians waited a long time to receive, for the expediency of another purpose that would adversely affect our citizens.

So I submit this on behalf of our caucus with the full support of the concerns raised by our privacy commissioner, Ann Cavoukian, and a substantive number of birth parents and adoptees who have expressed similar concerns. I will respond to any other comments.

Ms. Churley: I want to thank Mr. Jackson, the five times I've brought my bill forward, for supporting it without a disclosure veto. I appreciated that support at the time, because I believed that he understood then. He was one of the many Conservatives of the day, actually, who supported my bill. It was quite interesting that the majority of legislators—all of my party; most of the Liberals, except a couple, I believe; and at least two thirds of the Conservatives—reflected the poll that was done across Canada and across Ontario to see how many people supported adoption disclosure, and a huge majority did. I wanted to thank him for supporting it at that time. They're singing a different tune now that it's a government bill.

Let me say a couple of things about the amendment and Mr. Jackson's comments. First of all, we're very far behind. Other jurisdictions, like Western Australia, are ahead of us and they're now taking out the disclosure veto. Let's learn from those who are ahead of us, who put it in and are now removing it. That's number one.

Number two, there are various legal opinions. I don't want to say anything negative about lawyers, but we all know that if you need legal opinions, it's fairly easy to get opinions on both sides. There are lots of opinions on the other side of the legal equation here as well about withholding personal information. When we talk about

personal information and privacy rights, remember that we are talking about just the birth parents and the adult adoptee. We're not talking about opening up records to the whole world. If you were my birth father or whatever, you and I could apply for each other's information. Nobody else can. They'd be turned down. Sometimes misinformation about it makes it sound like anybody can apply and get all this personal information. It's not so.

If you bring in legislation that has a disclosure veto, it means that we continue to discriminate against a group of people, albeit a small group, who still would not be able to have access to information that everybody else—adoptees, plus those of us who were raised by our birth parents—would be able to have access to. It's not fair. While we're correcting this unfair, discriminatory legislation, let's not build in more discrimination. This is our opportunity in one sweep to get rid of that discrimination.

I would also say, to Mr. Jackson's comments about those people who wrote in, saying that they don't want retroactivity and that they're concerned about disclosure, this: If a massive education program were launched and we all spoke the truth and gave the facts here, I believe that those people who are now afraid about what might happen to them if their information is disclosed—that they're an adult adoptee, or vice versa, that they are more likely to be identified and contacted now, because of all of the facts I outlined earlier about the accessibility to information to find each other—would welcome this legislation, even without a disclosure veto, because of the contact veto which is in place.

Even if Mr. Jackson were right, and on a couple of occasions that was violated, the fact is that there will be a legal remedy. There isn't now. So I think it's really important for us all, including Mr. Jackson and the Conservative members, to make it clear to those people, for their own peace of mind—because there's misinformation out there—that in fact this legislation will give them more protection once it's passed than they have right now.

I want to end by reminding people again that privacy commissioners across this land, including here in Ontario, admit freely that adoption legislation does not come under their purview.

You know, of course, why adoption laws were exempted. Think about it: It is because, if they weren't exempted, they would be obliged to give personal information to the adoptees. It's as simple as that. Right now what's happening is that personal information is being kept from adults. The kind of information that we take for granted about our birth heritage is locked away in a file and they're not allowed to have it. Imagine if that came under the privacy commissioner. She would have no choice but to release that information to that adult. That is why they have been exempted.

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So indeed, the opinions have been given. They are not legal opinions; they are opinions based on being asked in terms of how they oversee privacy and right to information, but in fact there are many legal opinions. I

will be providing information a little later about the recent case of Donna Marchand, who many of you know recently won a court case. She had been trying to get access to her birth information for many years. She won the case and those records were opened up to her. So there's already a precedent out there in terms of a particular case, which I believe would indicate that if there is a court case—and if there is, there's going to be, and that's fine—the reality is that with the case that was recently decided upon, the precedent now, I would submit, would mean more to the legal side of having to provide that information to adult adoptees.

Mr. Arnott: I too wish to speak in support of this important motion. I think this is probably the key amendment that's being put forward by our party. I'm a bit disappointed to hear some of the government members this morning accusing our party of being obstructionist. It's certainly not my intent to come here today and be obstructionist in any way, shape or form. It's a bit rich to hear this from some of the government members because I distinctly recall, when I had the opportunity to chair the Legislative Assembly committee in the mid-1990s, one member for Windsor West, who is now the Minister of Community and Social Services, speaking at some length, to say the least, to the issue of referendums that the government was considering and seeking a report back from the committee. Again, there was absolutely no time allocation motion on the committee's business, and the member for Windsor West came to every meeting. Quite often she was the only member of the Liberal caucus who was present at the meeting, and she had the capability to speak to the issue for two and a half hours a day, and she did so in many, many cases. As Chair, I certainly allowed it. I didn't criticize her. I didn't suggest that she was trying to filibuster. Members can check Hansard if they wonder about this, but that's a fact. It went on for weeks and weeks and finally, at some point, came to a conclusion. But to suggest that MPPs who wish to debate these kinds of issues before a standing committee and have these issues thoroughly discussed, debated and hopefully resolved in the public interest are simply trying to filibuster in every case is simply not the case and is not accurate.

I would return to the document that all members have that was sent to us by the Information and Privacy Commissioner on September 7. Of course, this is a supplemental submission to the presentation she made to this committee earlier this year. The privacy commissioner indicates that she supports greater openness in the sharing of adoption-related information, but she again suggests her concern "about the proposed retroactive application of the legislation to records that were created during an era when secrecy was the norm, without the existence of a mechanism for individuals to prevent the disclosure of their personal information (i.e., disclosure veto)."

She offers us the expert opinion—an independent opinion—of Dr. Anne-Marie Ambert, who is a sociology professor at York University, who emphasizes that she's

a researcher, not an activist. In Dr. Ambert's presentation, she says:

"I would go one step further, as my expert opinion leads me to be very concerned about opening records retroactively. Indeed, many birth mothers will have shattered lives as a result of being 'outed,' while many adoptees and birth mothers may be approached by a disturbed birth parent or child, not to omit cases of incest, rape, sexual coercion, etc. Contrary to media-promoted pop psychology, many adoptees are not interested in being 'reunited,' and many birth mothers who have moved on and have children 'of their own' do not want to revisit the past. Yet, these persons are completely normal."

Again, I'm rather surprised that the government seems to be dismissing these concerns that have been brought forward by the privacy commissioner. We're not really hearing any more rebuttal from the government or an effort to rebut these serious concerns that are being put forward by the Information and Privacy Commissioner, supported by a number of legal experts. I would turn again to a document that each member of the committee should have that was sent to us in late August by Richard Owens, the executive director of the Centre for Innovation Law and Policy. Again, I won't read all of his comments, but I think a salient point he makes is:

"As stated above, this bill starkly offends the right to privacy. That right in Canada is articulated, and protected, by evolving common law, legislation, international instrument, the code civil, and the Canadian Charter of Rights and Freedoms. A bill that so materially abrogates a right to privacy, long settled between citizen and state, is probably not immune to legal challenge. After all, it newly empowers government itself to disclose highly sensitive, hitherto confidential records against the will of a citizen. Moreover, because the immediate effects of the bill will be so detrimental to important privacy interests, one might expect a court to forestall its operation by injunction pending resolution of its validity."

I certainly have not heard from the government members so far this meeting any effort to rebut that important point. I would certainly challenge them, and if they have information to put before this committee which effectively refutes or rebuts this important point, I'd be interested in hearing it.

I would say again, this amendment that has been moved by our critic, Mr. Jackson, would address many of the key concerns that have been brought forward by the privacy commissioner and others, and I would encourage government members, notwithstanding the marching orders that may have been given to them, that if they don't support this amendment, they will be doing a disservice to thousands of people in the province of Ontario, and affecting their lives in a way that perhaps we can't even comprehend.

The Chair: Thank you, Mr. Arnott, and I note that it is 12:00. It's time to break for an hour. I would invite all of you to be back at 1:00. I thank you for your contribution at this time.

Ms. Churley, before we break?

Ms. Churley: Yes, just a quick request. I'm attending a press conference at 1:00 briefly, the one Mr. Jackson was referring to. I would ask that any of my amendments be stood down until I return from that at about 1:30. Could I get permission?

The Chair: Do I have consent to do that, if that will be the case? OK. I do have consent and I will be able to do that.

Ms. Churley: Thank you.

The Chair: Have a good break. Thank you.

The committee recessed from 1200 to 1305.

The Chair: Back to you, Mr. Jackson. We're dealing with page 13.

Mr. Jackson: Mr. Chairman, without getting into the optics of the absence of several of our members with a press conference going on at this moment, I would respectfully request a 20-minute recess until we can assemble not only the individuals who are required to be here for the Legislative Assembly, but also the adoption community, which is there and not here. I heard quite passionate speeches about the importance of getting everything done today in front of all these people, and they're at a press conference. I find it quite unusual. I won't characterize it in any other way than that, but I respectfully request a recess until we can assemble the principal players in this legislative review, Mr. Chairman.

The Chair: I thank you, and I would—Ms. Wynne, any comments on this?

Ms. Kathleen O. Wynne (Don Valley West): I think that Ms. Churley asked that her amendments be stood down until she came back. We all agreed to that, and I think she was perfectly fine with us going ahead, so I wouldn't see why there would be any reason to stop now. I think we should just go ahead. We dealt with that arrangement before the lunch break.

The Chair: I understand that I need unanimous consent to give 20 minutes or whatever amount of time, therefore I ask if there is unanimous support for a 20-minute break.

I didn't hear a no, so you have 20 minutes.

Interjection.

The Chair: Nobody objected, so you have 20 minutes.

Ms. Wynne: I said no, absolutely. I don't agree.

The Chair: Is there an objection?

Ms. Wynne: Yes, there is an objection.

The Chair: Mr. Jackson, back to you.

Mr. Jackson: I thought you'd allow us to debate the points. You have recognized one member to comment on my request for an adjournment.

The Chair: I was trying to see if there would be support. Now that I hear that there is no support, if you want to argue, I don't have much of a choice.

Mr. Jackson: I respect Ms. Churley's right to call a press conference at exactly the time this committee is supposed to be doing its work. It's her right to do it. My concern is that I'm not there to hear what's being said,

not only by one of the three political parties, but I'm also not able to hear what the adoption community is saying, which they've been called forward for. I suspect that Mr. Parsons—I can't account for him but I suspect that he, equally as concerned, as someone responsible within his caucus for the forward movement of this legislation, is there. I'm just not given the same rights and privileges because Ms. Churley was clever enough to say, "Don't worry about me. I'll be gone for a while." But she took the adoption community with her.

Mr. Jeff Leal (Peterborough): I think Mr. Parsons is just standing outside the door.

The Chair: I did notice Mr. Parsons outside the door when I came in. He's still there. I guess we have two choices. I hear that there is no unanimous support. On the other hand, Mr. Jackson will continue discussing the issue as long as he wants, and I can't prevent that from happening, so I'm not too sure that we're getting anywhere in that sense. I'll ask if there is any more debate on the issue, and if there is none, I will ask for a vote. Mr. Arnott?

Mr. Arnott: Mr. Chairman, I'm somewhat concerned because I thought that any member could ask for a 20-minute recess before a vote and that it would normally be routinely granted, that it wouldn't go to unanimous consent of the committee.

The Chair: I'd be happy to ask staff to comment on your question, if I may.

The Clerk Pro Tem (Ms. Lisa Freedman): The rule is that members are automatically entitled to up to 20 minutes when the question is put. We're in the middle of debate, but if debate were to finish, then it's an automatic up to 20 minutes.

The Chair: It seems that if there is a debate, the motion on the floor doesn't apply. That's why I have to have unanimous support. Any more comments on the request?

Mr. Jackson: If the debate is not going to be impeded, then I wish to put on the record a couple of additional issues around the concerns being raised about a veto. I was on the phone to one of my constituents over the lunch hour who found out about this process through the media. He and his wife just adopted a five-and-a-half-month-old from the children's aid society. He wanted me to put on the record his concerns about the disclosure veto and the access for the individuals, where the birth parents have an extensive criminal record. I'm just passing on his concern. His concern is that if he is still living at this home in Burlington, these individuals will present themselves on his doorstep when his wife is home by herself. He's genuinely concerned about it. That whole issue is one which is causing him considerable concern on behalf not only of his son, whom he's recently adopted, but also for the safety of his wife. It would appear that there seems to be no system in place to deal with this, other than now that you have the information.

1310

I noticed when I was reading some of the materials in other jurisdictions that there are notice periods, advance

warning periods, and obligations to have a third party inform others. It seems to be a general lack of interest in looking at that, and maybe I can ask staff if that was ever considered or why it was rejected.

The Chair: Would staff please answer?

Ms. Lynn MacDonald: I can't speak specifically to that, but I can say that there was a thorough examination of the legislation in other jurisdictions in Canada and elsewhere. As to decisions on why to accept or reject certain elements of other regimes' rules, you'll appreciate that I would not be able to comment on it.

Mr. Jackson: But you do acknowledge in your research that there are jurisdictions who have put their minds around this issue of the security of the person who has no choice in the matter of disclosure of their information. You'd really only be looking at places like England, recently, and one jurisdiction in the country of Australia, that have an unfettered right to access information.

Ms. MacDonald: Staff have looked at legislation from jurisdictions in North America, Europe, the UK, Israel—I think that's as far afield as we went—and Australia.

Mr. Jackson: Fair enough, but I'm asking you which jurisdictions have the combination of retroactivity and no disclosure veto whatsoever. The minister has cited Australia, and Ms. Churley has cited recent developments in England. I'm just asking you to confirm that this legislation is advancing on an example that exists in one state within the country of Australia.

Ms. Krakower: Three jurisdictions in the United States have those types of systems in place: Alabama, Oregon and Tennessee.

Mr. Jackson: And other jurisdictions that have the combination of retroactivity and an unfettered right; in other words, no veto provision? Are those the only three you can give us? Perhaps the other individual can identify himself and be helpful.

The Chair: Anyone from staff who has an answer.

Ms. Krakower: New Hampshire is another state, and of course you mentioned England and New South Wales. That may not include every single last jurisdiction, but those are the ones we've researched.

Mr. Jackson: Your assistant deputy gave us an extensive list, and these are the four or five you've been able to come up with. So my question again is, of those jurisdictions, which ones have a requirement for the state to notify the applicant that there has been a request for information and it has been given?

Ms. Krakower: Just to clarify: for the state to notify the individual that there's been a request?

Mr. Jackson: Yes. It's my understanding that some legislation that deals with no veto to information requires a period of time to notify the families or the individual that their disclosure information has in fact been—well, it's two things that you let them know: that there's been a request, and that the request has been conceded to and that that individual is in receipt of it as of a certain date; and there is a period. There are three components to this:

There is the notice, and then there is a waiting period or whatever you want to call it.

Ms. Krakower: New South Wales isn't the only jurisdiction, that I'm aware of.

Mr. Jackson: Can anyone on the government side explain to us why the protections that existed in New South Wales were rejected by the minister?

The Chair: Mr. Parsons, would you like to answer? You don't have to.

Mr. Parsons: I'm not paying as close attention to everything you're saying as perhaps I should, Mr. Jackson. I apologize for that.

Mr. Jackson: All right. I had asked staff, in those jurisdictions that have retroactive legislation and full disclosure with a non-disclosure veto—that there is no veto of disclosure—which has a provision that requires notice to the family or the person who will be affected that (a) there has been a request for information and (b) the applicant has received the information?

In the body that I've that read through, a couple do it for several reasons, one being to give the families time to notify other family members, "This is about to be disclosed and I think you need to know about it." It speaks to the issue of the therapeutic intervention that may or may not be required but should be empowered in the hands of the individual who is affected. It has several purposes.

Staff have indicated that, to their knowledge, the only jurisdiction that has it is New South Wales. I'm going to ask them exactly what New South Wales does, but I got ahead of myself and I asked if there's a reason why the minister didn't include this in her legislation. One could cast it as a courtesy. We're hearing from others who are casting it as an issue of protection. We've heard a third group of individuals who are saying, "I need time to prepare my husband to let him know that I was raped when I was 14, and I've never told anybody." I don't want to sit here for an hour and read all these letters, but I've got lots of them. Some of them have said, "Look, if this thing is going to happen, can someone not listen to us even to the point that you'll understand what it's like for a woman to be put in that position? I would like a little bit of time to go and explain that to—" and for some people, that's a lot of people. They've got their children, their husband and their husband's whole family.

Some jurisdictions have approached this from a sensitivity point of view and determined that something should occur here. We're silent in this area. Perhaps staff could enlighten us as to what exactly is done in New South Wales in this regard, since it has surfaced during the recommendations and you're confident—I'm looking to the assistant deputy minister—that Alabama, Oregon, Tennessee and New Hampshire have not gone in that direction at all.

Ms. MacDonald: With your permission, I'd like to introduce our senior analyst, Hari Viswanathan. Hari has been responsible for doing interjurisdictional research. So rather than working through us, I'd like Hari to answer your question, if that's agreeable.

Mr. Hari Viswanathan: In New South Wales, they have what's called an advance notice registry. The advance notice register ensures that persons who are anxious at all about being identified have two months prior to any identifying information being released so they can prepare themselves and their families for any sort of potential concern about the information being released. With the register, they have to actively put their name on it in order to notify the government that they want this delay in disclosure to occur.

Mr. Jackson: What is the length of time?

Mr. Viswanathan: Two months.

Mr. Jackson: In any of your research, was there any evaluation of this provision with respect to—I would imagine that it would lessen some of the anxiety around matching.

Mr. Viswanathan: This provision actually came after a law reform commission report, I believe in 1992. The legislation was introduced in 1990; it opened up records. This was one of the factors that was recommended to protect the privacy of individuals or to respect the privacy rights of individuals. I'm not aware of any other evaluation of the mechanism, no.

1320

Mr. Jackson: Then how does this advance registry work? I can see that the rationale from the law commission was the principle in law that you need to give proper notice to prepare someone. We do it if you're a criminal: You're given proper notice before you're hauled off, and so on. I can see that principle.

But when you reference the issue of privacy, their privacy rights have evaporated. This is simply a protectionist mechanism to say, "Look. If you need to get your house in order, here's two months in which to do it." We have an informal system for rape victims, for example; I know, because I wrote the section. When you leave prison, there has to be notification to the victim that their rapist has been released. Then she is provided with an impact statement to determine if the courts have an opinion about whether this individual should leave, and so on and so forth. That principle in law I'm quite aware of, and that's why I wanted to know. But it's more for the case of a privacy issue, is what you're saying, in the research.

Mr. Viswanathan: I have no comment on the efficacy of the actual system; however, my understanding is that from the report that was released, there were certain mechanisms that were looked at in order to assess whether there can be some protections in place for the privacy of individuals.

Mr. Jackson: Based on the sampling of those that you examined, Alabama, Oregon, Tennessee, New Hampshire, England and New South Wales do not have this—oh, New South Wales has it. But England didn't put that in, about giving them notice?

Mr. Viswanathan: Not to my knowledge, no.

Mr. Jackson: All right. We're going to table an amendment that mirrors the New South Wales Legislation. I need to ask: In New South Wales, they continue

with a department that maintains carriage of all the records for adoptions in New South Wales, is that not correct? That department would manage notifying individuals, or receiving requests from persons who want to be given two months' notice before contact information is released. Is it a government agency that manages that, or is it an arms' length agency?

Mr. Viswanathan: My understanding is that it's a government agency that hands out what's called a passport, which provides the adoptee of the birth parent with accessibility to the particular agency that holds their adoption-related information. So the government is kind of the gateway, as it were, to getting that information.

Mr. Jackson: My question then would be not necessarily to you, as the researcher, but would the office that handles the records—I should memorize what we're calling that place—have the capacity to process the custodian of the adoption information? You call it the "custodian." Would they have the capacity to be a means through which people can register a two-month delay of the transfer of the information?

Ms. Krakower: It's my understanding that one of the amendments that you put forward was with respect to a delay when an individual is not successful in obtaining an order to prohibit disclosure.

Mr. Jackson: Right. Has that section been passed? I should turn to legislative counsel.

Ms. Krakower: I believe it carried.

Mr. Albert Nigro: Mr. Jackson, as you know, I'm just filling in, and I'm not sure what section in the bill you're referring to.

Mr. Jackson: This is the section—and staff could be helpful in directing us—that deals with the appellant mechanism for victims of sexual abuse.

Ms. MacDonald: The motion obliges the registrar general to delay the disclosure of identifying information to a birth parent when the Child and Family Services Review Board does not issue an order.

Ms. Krakower: Government motions 21j.2 and 21j.3 have both carried, and those are similar motions. Those are both with respect to the registrar general allowing a period of delay for a time period that the board would consider appropriate before disclosing information.

Mr. Jackson: And when the board rules against the applicant, would they be given a two-month grace period before notice?

Ms. Krakower: It could be two months, it could be a month or it could be three months, depending on what the board considers appropriate in that particular situation.

Mr. Jackson: Mr. Chairman, I'm going to need assistance from legislative counsel to draft a motion which specifically allows someone to file a motion or simply apply to have a two-month delay before the records are released to the applicant. Upon an application for disclosure, the subject has a right to a two-month or whatever notice period before the file is transferred or released, I guess would be the proper—if I could get some assistance. It doesn't have to be done in the next 10 minutes. I'm not going to hold up the procedure.

It was a concern I raised at the time when we were doing the appellant mechanism. There are a couple of cases of families who say that the horror of presenting before an appellant mechanism far outweighs any other kind of horror. Anyone who's had any experience with some of the other third-party interventions, such as women who have had to explain in detail to a panel of doctors the horror of their rape as a condition of being able to get an abortion in this province, as late as 20 years ago, would know how serious an issue this is. Women reporting a rape who go into a hospital are required by law to disclose, whereas if they go to a rape crisis centre they're not required to, under the law. That's why some women choose to report their rape to a rape crisis centre instead of to a hospital or to the police. There are several other examples of that, but it's also the principle under the Victims' Bill of Rights—which these women who bring their children to term still are—that they are not required, through any tribunal in Ontario, to retell or recount their stories. Yet we're now creating a panel that allows them, three strange men or women, to determine whether or not a person's circumstances that they endured many years ago are the subject of a review.

I would ask counsel to help us prepare that so that it reflects more the spirit and understanding of the law commission report in the highly touted New South Wales model that the minister is so proud of, and you certainly would want to embrace that component. I suspect that they would have had some cases that did not work out very well that even could have resulted in—

The Chair: Can I then ask for a five-minute break so that staff can do that? I think that should be enough time to do that.

Mr. Parsons: Just a question, Chair: Could we have some sense of how many more amendments we expect to have brought forward during this?

The Chair: Mr. Jackson or Mr. Arnott, do you have any idea at this point?

Mr. Jackson: I can only say that there will be more than the government is presenting today; that's for sure.

The Chair: That's an answer. Thank you. Five minutes, please.

The committee recessed from 1330 to 1341.

The Chair: I believe we can resume our meeting. Mr. Jackson's amendment will be coming later on. We will continue on the amendment which was in front of us. Mr. Jackson, back to you, unless you don't have any more comments at this point.

Mr. Jackson: We will have an opportunity to fully debate this issue of why, in the absence of a disclosure veto, we do not accommodate families out of simple courtesy. I'm sure the law commission in New South Wales would probably suggest to you, in the best interests and the safety of the applicant, that some accommodation be made here.

I am increasingly worried that much of this legislation is being developed on the basis that we are removing a substantive portion of the support mechanisms within this ministry, and that is something that's been echoed by

several groups. Those who strongly support the legislation are concerned about the support services that would be in place to sustain its best operation.

I indicated that we benefited from several additional legal arguments with respect to the issue of the motion on the floor about a disclosure veto. In fact, even the law society and the health/law section of the Ontario Bar Association have quoted from the Freedom of Information and Protection of Privacy Act, RSO 1990, from the Personal Information Protection and Electronic Documents Act of 2000, and from a Supreme Court of Canada charter ruling on *Hunter versus Southam*. The list goes on and on of concerns that they keep stating about the importance of keeping personal information confidential and not subjecting people to essentially plea-bargain with a quasi-judicial panel with no accountability to determine whether or not a person has enough emotional stability to have their information shared with other persons.

So for that reason, I am quite concerned about the absence of any independence to the veto option. Clearly, this disclosure veto is all-encompassing. It's what occurs in four or five other provinces currently. Well, actually, virtually all of them have a disclosure veto, if you include those who have had sunset provisions, so that new adoptions have to conform to full disclosure. That means there are people in that province who still have access to a grandfathering provision that allows them to have a veto. So for us to be the second jurisdiction to engage in this substantive activity—well, I shouldn't say that. Alabama, Oregon, Tennessee and New Hampshire currently have the retroactivity and no veto.

I've referenced the law, the Ontario Bar Association, and for some reason, I have a couple of extra copies. I suspect that somebody may have dropped that on my desk by accident, because I seem to have everybody's copy here. I don't know why I would have seven or eight copies. I'll give them back to our outstanding clerk. I only needed to read one.

The Chair: I thank you for being so kind.

Mr. Jackson: The failure of the no-contact provision is why we have tabled the section that deals with adoption, the information disclosure veto. They reference in their report:

"It is not clear how parties will be apprised of their right to register a no-contact notice, and how the timing of it will work. Under subsections 48(3), (6) and (7), notices registered by a birth parent or adopted person are ineffective if the registrar general has already given out the information." This is a Catch-22.

"Unless there is a lengthy moratorium period that would allow birth parents and adopted persons to file no-contact notices in advance of the registrar general making disclosure, many persons may be contacted who did not wish to be."

That is a concern being expressed in the manner in which the current legislation has been worded with respect to the no-contact provision and the appeal.

"In conclusion, we are very concerned that Bill 183 mandates openness in past adoptions in a way that compromises established privacy expectations. It may

cause unnecessary stress and emotional trauma to many and, if only in isolated circumstances, results in significant harm. We urge the committee to carefully review Bill 183 to see if its laudable objectives can be accomplished without unduly compromising individual privacy."

The presence of a disclosure veto, we think, is fundamental to upholding the principles contained in our privacy act and in our charter. There have been very few times that I have participated in legislation that we know in advance will be challenged and, in all likelihood, fail. I urge all members to at least consider this.

Mr. Arnott: I'd just like to offer some additional information that hopefully would persuade members to consider supporting this amendment in favour of a disclosure veto. It comes from today's news clippings, an article by Christina Blizzard. She offers a scenario that I think is quite possibly out there in any of our communities today. She writes:

"Imagine you're a 70-year-old woman. Fifty years ago, to borrow an expression my mother might have used, you had a child out of wedlock. Back then, it was something nice girls didn't do. Or if they did, they didn't advertise it.

"You went off somewhere, had a baby, put the child up for adoption. While you never forgot that child, you got on with your life.

"At a time when birth control was (a) unreliable and (b) frowned upon by many, an adolescent indiscretion turned your life upside down. Now, having done the right thing and having abided by other people's rules, you're expected to bare your soul because another group has come along to change the rules—again. When do birth mothers, those forgotten heroes in all of this, get to play by their rules?

1350

"The most significant amendment to the legislation allows women who don't want their history revealed to go to the Child and Family Services Review Board"—this is the government's amendment, of course—"for an order prohibiting disclosure of that information to prevent sexual, physical or emotional harm. So, you're 70 years old and you're an honest person. How do you answer that question?

"Is anyone going to rape or torture you for your indiscretion? Unlikely. Do you have a history of psychiatric problems? Well, no, you just have this odd notion that a deal struck 50 years ago which you have honoured should be respected by the state—not to mention the child who benefited from your original decision.

"Privacy commissioner Ann Cavoukian has been raising the alarm for several months and she still isn't satisfied with the amendments. Her office still opposes the legislation.

"You would have to show you would experience harm, so there is a harm's test built in and I think that the commissioner would say that miscasts the question,"

assistant privacy commissioner Brian Beamish said yesterday.

"Individuals shouldn't have to show that they would suffer harm. If they relied on undertakings of confidentiality years ago, they should be able to rely on those undertakings of confidentiality now."

This again underlines why a disclosure veto is needed. I would urge members of the committee to seriously consider what the opposition is saying.

The Chair: Ms. Churley, you're next.

Ms. Churley: I want to read something into the record briefly that I referred to earlier. It is not just for the members of this committee and Christina Blizzard, who wrote this article, but for other adoptees or birth parents who do have concerns about their lives being disrupted. It is important to repeat this over and over again. This came recently, actually, from the privacy commissioner. Here's what it says. It's in great big black letters:

"Alert for Birth Parents

"Adoption Identification Alert

"Until recently we believed, on the basis of information that we then had, that outside of the adoption disclosure registry scheme, it was extremely difficult for an individual to obtain identifying information from the registrar of adoption information other than for health, safety and welfare reasons. We are now aware that potentially identifying information from adoption orders is made available to adult adoptees on a routine basis.

"An adoption order contains the information set out in a designated form, and includes such information as the child's date of birth, place of birth (municipality, province and country), the name of the judge and address of the court issuing the adoption order, and often the full name of the child before adoption. The child's surname before adoption will likely be (although not always) the same as that of the birth mother or father. This, together with the other information, can be used as a springboard for identifying the birth parent."

The privacy commissioner goes on to explain more. It's basically an alert for birth parents.

I read this into the record to reiterate once again to those out there who may be watching this, to people here on the committee, to the privacy commissioner herself, to anybody who shares those concerns after reading an article like Ms. Blizzard's, what the information straight from the privacy commissioner is saying to birth parents. This is what we've been trying to say all along, and it has been buried. Right now the chances are, if somebody of that age 50 years ago had a child out of wedlock—and many did, if they weren't forced into marriage at the time. I would submit that that women who had the child 50 years ago, so-called "illegitimate" at the time—isn't that a terrible word? If that "illegitimate" child wanted to find her by now, they would have done so, because this information is already out there, by the privacy commissioner's own admission, plus, as I stated earlier, all of the non-identifying information that's provided, the Internet searches and all of that.

This is such an important point. For those people who don't want contact, for those people who fear that their privacy could be invaded, it is important to understand that this legislation with the contact veto, which doesn't exist now—with this information available—will actually provide a protection that doesn't exist today. It is really important to keep reiterating that, because I know there are people out there—I have heard from them as well, as I'm sure we all have; they're there—who are very concerned about their privacy being invaded. There are actually some adoptees, not just birth mothers, who feel they have happy lives and at this stage in their lives—who knows? It could change—feel threatened and don't want the contact. That is why it's so important to tell the truth here and to get the information out.

I'm going on at length about this because it is so important. I know that this message is getting lost, given articles like that and some others and editorials in newspapers and the stance of Conservative members. I'm very pleased that the privacy commissioner has now come forward with this information because it actually reinforces the position that I've taken all along, and that of the adoption community, many of whom are here today, representing all aspects. We just did a press conference and I welcomed everybody into the committee hearings this afternoon. We all understand that there are some people who are very concerned that this bill is going to take away a certain amount of privacy that they feel, but it's a false sense of security that exists right now. I want to thank the privacy commissioner, after we released this information, for putting it on the record. It's there; it exists.

I would reiterate that all members should take the time to look at all of the evidence, not just selective evidence that supports their position, and that goes for all of us. As Dr. Grand pointed out in the press conference this morning, there are some recent studies rebutting the study that Mr. Jackson related this morning. A hard, cold scientist—not the so-called activists like us, but a hard, cold scientist who actually has a deep-seated background in this material, far more so than the studies cited this morning. But if you look at those studies, if everybody reads the information that's out there today—and I would say that to the reporters as well—in terms of somebody showing up at your door, although people don't do it, it is much more likely today than it will be once this bill is passed.

The Chair: Further debate?

Mr. Parsons: I'm not sure I have anything to add to the debate but I feel an obligation to give Mr. Jackson's voice a break once in a while, so you're OK for the next little while.

This is a made-in-Ontario bill. It's not a made-in-New-South-Wales or a made-in-Alberta bill; it's a made-in-Ontario bill. I'm pleased with the extensive consultation that this government undertook on it. The people came forward. It's great to read things into the record and they are very useful, but we need to remember that already in the record is the testimony given by many individuals who sat at that table and spoke to us.

One of the issues is certainly a need for someone to prepare. It's our government's commitment that there will be an extensive advertising campaign because this does represent a radical change in the information available to individuals in this province.

I don't think I have ever met any adoptee who didn't know they were adopted, whether having been told—I represent a rural area, and our children are adopted. Quite frankly, we know the names of their birth parents and we've never sought them out. It's just the reality of a small town that we became aware. We had an individual come up and comment on one of our children and say, "They look so much like—" and they were bang on. We didn't say, "You're bang on," but they were. That's part of a small town, and I love it, because the birth parent is not a threat to us or our children.

1400

Will there ever be contact? That's up to our children. That's something that they will drive; not us. If the birth parents wish to have contact, that's up to our children. I think it would be great. There's almost a sense that it's a threat, that a birth child showing up at a home will destroy a life, and maybe it will, but experience hasn't shown that.

I've changed my vote over the last couple of years, folks. I've changed my vote because I recognized that what people were saying to me was genuine and was right. I've never walked in their shoes, and they have, and they brought a perspective to me that I said, "I accept. I can see their viewpoint." I was the poster child for opposition to this bill at one stage.

Ms. Churley: I remember that.

Mr. Parsons: Yes, I voted differently on your bill than I am on this bill. I'm voting this way on this bill not because it's a government bill and I'm on the government side; I'm voting this way because I think it's a good bill.

When we're reading into the record, let us go back to what people said. Were there promises made to birth mothers that their name would never be given out? I believe there were. Whether it was done with authority, I don't know; I think there's some question on that. Were there promises made to birth mothers that, when their child reaches a certain age, they would be reunited? I believe that there were, which emphasizes to me how completely unstructured the adoption legislation has been historically in this province. I've used the phrase that it's the Wild West, and I continue to believe that.

The inference is that when a child becomes adopted, their mind is like a slate and it's wiped clean, and they don't know they're adopted and won't remember it; that when the birth mother saw the child for the last time, their memory was wiped blank and they went on with their lives and never thought about it. Because of some personal experiences, I have the sense that they probably think about it every day, because it's part of their fabric; it's part of the adopted individual's fabric.

We're looking at some amendments as if we need to legislate human emotions and legislate human behaviour, and we can't. We can't legislate passion, we can't

legislate love and we can't legislate desire, but what we can do is legislate process. This bill doesn't change any emotion or anything that's going on in this province or in this world other than that it establishes a process, so that with extensive ads—and I believe this bill has attracted significant media attention on its own, and that's great, because it gives everyone involved in any way in this issue awareness of what's happening. On top of that, there will be an advertising campaign.

When we talk about giving someone some time to prepare themselves, they've had all their life to prepare for it, and now this bill will warn them that there's a possibility that the information could be given out. At the same time, with individuals the official opposition is concerned about, it provides assurance that that doorbell won't ring and the person on the other side won't appear unless they want the person to appear. That's not there now. There's nothing there now to protect them. As you hear the concern, "I'm afraid that I'll answer the doorbell and my child will be there," you'd better have that thought each day, right now. Each of us in this room can think of significant numbers of stories of people who say, "I found my child," or "I found my parent." It's an illusion if we think that this will start that exercise taking place. This only legislates the process.

Everything we're seeing in the way of amendments is to further stall these parties getting together.

I had a gentleman sit down with me. He's in his early sixties and has been on a mission for about six years to find his mother. He found her in the graveyard, where she had been for less than a year. Had this bill been in place, he would have found her and had some contact.

Maybe it's a factor of age on my part, but my roots become more important to me as I get older. I don't think I'm any different than anyone else. I know why I look the way I do. My grandfather was ugly, my father was ugly, and I inherited that. That's the reality. If I'm ever in the media, I have a radio face; I know that. There are other characteristics and other things I have that I find kind of neat to see when I see a photograph of a great-uncle of mine, complete with the bars and the number underneath. It's important to me. It gives me some sense as a human, that I am part of a greater plan and a greater enhanced family. Amazingly, some of our adopted children look like us. I'm not a scientist; I don't understand that. But for others, I know it will mean a great deal to them to be able to share in the accomplishments of their grandmother and their grandfather and their great-grandparents, and to know family behaviours. I know everybody is different, but it's amazing how much of the behaviours we have that are inherited. It would kind of neat for them to find out why they do certain things that they do. We know in the case of one of our children that he does something that we didn't understand, but we eventually found out that that was a family characteristic. That was nice.

Please, don't delay it. Don't put in more roadblocks. This bill was put together by a panel of experts consisting of the people of Ontario who came out to the hearings

and told us what they needed and what they wanted. Not everybody agrees on everything. That's the beauty of us as humans, that there is that diversity. But the vast majority carried the same message, and I believe this bill reflects that message. I'm very saddened for people whose expectations had been up for some months now, for some years now. I give credit to Ms. Churley in her bill that drew forward people's hopes and expectations some years ago. For them, it isn't a matter of waiting from June to today, folks; it's a matter of waiting since—what year, Marilyn?

Ms. Churley: Well, I don't know, but it started well before my bill, as well.

Mr. Parsons: So, 10 years maybe.

Ms. Churley: Ten, 20 years.

Mr. Parsons: Yes. It's been enough. The province, the people in Ontario, I think, have given a fairly clear message on what the vast majority believe. There are safeguards here to prevent contacts. This bill has got to be an improvement. I'm not adopted, but I hope I have just a little bit of a glimpse and a sense of how important it is to these individuals. I just hope that we can make some progress on this and get on to the next step. It's going to happen not because we have the most members, not because we're the government; it's going to happen because the people of Ontario—this is a wave that's happening across the world. Let's be a leader, instead of being dragged kicking and screaming into the current century. Thank you, Chair.

The Chair: Thank you, Mr. Parsons. Is there any further debate? Mr. Arnott is next.

Mr. Arnott: I listened to the presentation by the parliamentary assistant and I appreciated what he said. I just want to ask him a question. Why is the government dismissing the concerns that have been publicly expressed by the Information and Privacy Commissioner?

Mr. Parsons: I think it's unfair to characterize it as dismissing. They have not been dismissed. As you know, the difficulty of this issue—well, I guess almost any issue—is balancing rights. Your party has made an eloquent case for the right of an individual to not have their information disclosed; a very eloquent case. I understand that. I made that argument at one time. But at the same time, if we're looking at rights, do we as individuals and Ontario citizens not have the right to information about ourselves?

As you argue for one group to not have to give out information, you are making an equally strong argument that another group is not entitled to have their information. That's the difficulty.

1410

Very clearly, there are thousands of individuals in Ontario who at the present time do not have the right to know who they are, where they're from, their medical history. The legislation as it stands now bans people from knowing who they are. Is there a compromise that will satisfy both? There isn't.

If we go back in history, at one time, there weren't adoptions. The child simply went and lived with another

family. Then the school of philosophy became, "Don't tell the child they're adopted; don't let anyone know," as if it were wrong. That was the thinking 100 years ago: as if it were wrong. Thank goodness we've moved beyond that.

What we are gradually doing—and this bill is a culmination, in my mind—is granting adoptees full citizenship. For the first time, they will have the same rights that non-adoptees have, because there's a gap right now.

You and I, assuming you're not adopted, have the luxury of getting medical information simply by a phone call or a question or asking another relative. You and I have the luxury of having siblings. There are adoptees who don't even know that they have siblings. So we have right now a group that has been deprived of their rights, and as we hear the argument of another group losing their rights—and I'm not sure about that—I would make a stronger case for the group that needs to have their rights restored.

So I disagree that we've ignored the privacy commissioner's statements. What we've done is bear it in mind in the total picture, and if we look at jurisdictions that have been ahead of us, the sharing of information has not been as traumatic as people believed it to be.

I've had contact—of course, as we've all had—with people very close to this issue, and again, I can't present a birth mother's perspective very well, but I have had a birth mother say to me, "Forty years ago, when my child went for adoption, I was promised that I wouldn't have information ever shared, because there's no way I wanted contact with them, but I do now."

When the speed limit is raised from 50 to 60, there is always the risk that somebody will die at the speed of 60 who wouldn't have died at 50. Everything in life is not perfect, but this bill is as close as we can get to giving the majority of people their rights and the right to know who they are, which is a fundamental right that was wrongfully taken away from this group. So I support the bill, because we have people in Ontario who are second-class citizens under the current legislation.

The Chair: Mr. Arnott, back to you.

Mr. Arnott: We're still speaking to motion 13 pertaining to the disclosure veto, which is fundamental. The parliamentary assistant talked about being from a small town. Like him, I'm from a small town. I grew up in the village of Arthur. I would agree with him that in most small towns in Ontario, people know their neighbours, know them well, and it's hard to keep a secret in a small town, but that's not to say that people don't have secrets in their past that the vast majority of their neighbours don't know about, and I would suggest that that, in fact, is the case.

I think about how this proposed bill is going to work with the establishment of a Child and Family Services Review Board. How is that going to work? If you use the example that Christina Blizzard talked about in her column this morning, there's a 70-year-old woman living in the village of Arthur who gave up a child secretly to have that child adopted when she was, say, 16 years old.

She never told her husband perhaps, never told her children that she might have had afterwards. How is she going to come down to Toronto to make this presentation to the Child and Family Services Review Board?

Or, conversely, is this review board going to travel? Maybe the board is going to travel to have meetings at the Legion in Arthur, perhaps at some public building. This hypothetical lady can go to the Legion that day and plead her case. Perhaps all her neighbours are going to see her go down to this hearing. Perhaps at some point she's going to have to tell her husband that this is happening. How is this going to work?

Mr. Parsons: First of all, you make it sound like if we don't pass this bill, there's no risk whatsoever of the birth child showing up. I would suggest that the risk is actually greater without this bill. The bill will provide for the information to be shared, and that gives the rights to the adoptee. The bill also provides for no contact.

All of us at this table work heavily with individuals. Our job involves meeting hundreds or thousands of individuals in a year. I don't think that your constituents are any different from mine; they're good people. Those who wilfully abuse the law are the vast minority. Whether this bill exists or not, if an individual is going to show up at her door, they'd show up without the bill too. She acquires for the first time, the woman in the example, the right to say, "I don't want contact." It actually lessens the chances of having to do what she believes will be a bad experience. I'm not sure that it will, but she believes it will be a bad experience at the door. This bill lessens that chance.

Again, I don't think that people are a lot different in different parts of the world. In other parts of the world where they have no contact, it has proven to be very workable. I think it would be rare for an adoptee to want to show up knowing that the birth parent doesn't want to meet them. They're not out to cause trouble. I have not talked to an adoptee who is rabble-rouser, wanting to go out and make the world pay for their problems. They talk to me about what a good life they've had, but there's a piece missing in the puzzle. It's this great, big jigsaw puzzle and one piece is missing. Simply knowing the name and being able to go to a genealogy centre and do some research on the family—I've had an adoptee say to me that she found the name of her birth mother and she simply walked by her mother's house once a day, until one day she saw her out in the yard, and she said, "That's all I wanted. I just wanted to see what my mother looked like."

I appreciate that the concern is genuine from these individuals who are opposed to this bill, but I don't believe that they have perhaps grasped the full significance that for the first time they're getting some protection, which is no contact. I don't think that knowing their name is a threat to them; I really don't. Showing up at the house could present some complications, and that's all it would. That happens every day now. I think that both parties, if we could set the emotions aside and the rhetoric that's happening right now and let things calm

down, would say, "No, this does provide some stability to the process."

I'm running out of words to say. To me, it is so obvious that this is better than the present situation.

We foster. These are children who come into care because of their need of protection. It's a small community. How many of the natural parents know where we live? Virtually all of them. Either the word gets through the grapevine or the foster children talk. They have memories. They come with a family. They don't come in our door with nobody; they come with a family, and they will tell their parents. What problems do we have with individuals who have had their children forcibly taken away from them showing up at our house door? Minimal. They understand that there's a process and there's a system within which they work. We're a pretty civilized society.

To that mother you refer to, this doesn't increase the problems; this decreases the problems by enabling her, for the first time, to fill out a piece of paper that says, "I don't want contact."

If she doesn't want disclosure, what will it look like? That's going to happen during regulations, not during regulations to defer it from this debate, but because there may very well not be one answer. It may be a room like this—probably not, but it might be. Or it could be a telephone call; it could be a phone. I think in many of the examples that we've had given to us, it will be fairly simple to establish that this is valid or not.

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My hope, and I have great faith in the people who will draft this, is that what it ultimately will look like will be what best serves this community. I know we have people paid to draft the bill and to work in community and social services, but they are there for a reason. They are not there because they couldn't get any other job; it's because they have a passion for this. I have no doubt in my mind that that same commitment will continue.

I'm asking you on faith. These are people who worked for your government and delivered 100% also. I think that we may very well end up with a variety of processes and mechanisms that allow those parents who do not want disclosure to make their case.

The Chair: Thank you, Mr. Parsons. Back to you, Mr. Arnott.

Mr. Arnott: I've known the parliamentary assistant for a number of years, since his election to the Legislature. I know him to be an honourable member and I know him to be a member who demonstrates integrity in terms of his public responsibilities. I think that's something that is admirable.

Given that fact, and given the fact that he's also talked about how he used to be opposed to Marilyn Churley's bill in principle and now he favours Bill 183, how does he reconcile the fact that Bill 183 essentially breaks a promise or hundreds or thousands of promises that were made to birth parents at the time they gave up their child for adoption? Of course, I'm making reference to a presentation that each of the members should have in

front of them from Queen's University associate professor Bruce Pardy. He notes on page 2, "Evidence already presented to the committee indicates that from about 1927 onwards, adoption records were sealed and parties in the adoption process were assured that they would remain that way. For many birth parents, that fact was important to their decision to give up their newborns for adoption."

We're told that is a promise that was made in thousands of individual cases, and that promise is now going to blow away in the air because of Bill 183. Didn't that promise mean anything? Why doesn't it mean something today?

Mr. Parsons: I was a member of the children's aid society board for over 25 years, and I chaired the board for a number of years. I was president of the foster parent association. I've been president of the adoptive parent association. We continue to foster. I'm not involved in the day-to-day operation of the agency, but as a small agency, I had some sense of it. Did our agency make thousands of promises? No, it did not.

I have no more evidence to dispute what you're saying than you have to present it. Again, that's what's been said, and I don't doubt your sincerity. I have a great deal of respect for you, and I appreciate your kind remarks about me. I was probably as close to the system as one could get without actually being an employee of the agency, and I don't remember thousands and thousands of promises. There are employees who may have. There has been reference given to me of written promises. I'm not aware of any; I've never seen any. I've learned to never say "never." Was it done somewhere in Ontario at one time? I don't know. I mean, the odds are that somebody somewhere did. But the question in my mind was, "If it was made, under what authority was it made, and by whom was it made?"

Do we base our bill and our decisions on an intangible promise that was made to someone that has the effect of removing the rights of another person? Because if that promise was made—let's assume it was—that promise at the same time said, "And your child has forfeited their right." "I promise you"—their child has forfeited their right. That's the second part of the promise, if it was made. That's the unwritten part, but it's there. That's how, I guess, I reconcile it.

The Chair: Ms. Churley, do you wish to comment on that question?

Ms. Churley: I do. Speaking from my own personal experience and that of many, many birth mothers I've been associated with over the years who have been dealing with this issue, some might have been promised verbally by a social worker—unauthorized but promised—"Don't worry, dear. Go away and forget you had a baby and get on with your life"; that kind of promise.

I certainly wasn't promised that, and this is just one story where it's quite the reverse for me. Had I been told that I would never, ever be able to get enough information to find my child, I don't know what I would have

done. It was the most critical aspect for me when I made the decision, and you have to remember that we made those decisions with a great deal of grief. We relinquished our babies with a great deal of grief because there was so much shame attached, in those days, to having a baby out of wedlock.

Most of us wanted to know that the day would come when we could find our children. I was promised that there would be enough information available. I was told about non-identifying information, and that some day there would be an opportunity to look for my child. Others were told, "Don't worry about it." People were told very different things. It was all verbal. I would say the reverse is true, Ted. I can't tell you what it's like to carry a baby in your body for nine months—your baby—to give birth to that baby—it's usually the first baby—and to know, when you're carrying it and when you're giving birth, that you're going to give that child up. You don't get to hold that child, and that is your child. It came out of your body. You nurtured it, and you know that you're relinquishing it. It's the promise—they promise that some day you're going to have the opportunity to reunite—that means everything to most birth mothers.

The answer to your question is that there's some real misinformation within that document about what birth mothers have been promised. Karen Lynn, who's here today, has said repeatedly and strongly in the press conference and to this committee that she was never promised. She's here with her birth son today; she's over there. Many, many other birth mothers came forward and told the same stories.

We have to listen to what we're being told. We have to read the learned documents that exist from experts in the field who have done in-depth studies who say the same thing. Those promises were not made. And if they were made, they weren't authorized; again, they would have been false promises. There's already so much information available out there anyway. You just have to look at an adoption order; you just have to look at the so-called non-identifying information.

I have to say that I think that question, Ted, to the parliamentary assistant was based on a false assumption.

Mr. Arnott: It was actually based on a presentation. It was brought to my committee's attention by Bruce Pardy, associate professor, faculty of law, Queen's University.

Ms. Churley: Well, he's wrong. There's evidence, and I can bring it forward, if you like. He's absolutely wrong. There's evidence to support that. There was no possibility, even if there were some verbal promises made. There were a lot of verbal promises made as well from other social workers that there would be an opportunity to find your children later in life. There could not have been an official—yes, some promises might have been made by some social workers, but it wasn't sanctioned. That is not the way the system worked.

The Chair: Is there any further debate on the topic? Mr. Jackson.

Mr. Jackson: I do want to respond to a couple of things. Ms. Churley read into the record the comments by

Ann Cavoukian. It is a matter of record that the degree to which a patchwork of laws governing disclosure of adoption information in this province is rather checkered and has resulted in exposure for some individuals, but not across the board for all individuals. What has been noted, which was also part of the facts in this case, is that certain children's aid societies dealt with these issues differently from others. The subject matter that was just being discussed: In Catholic children's aid societies 30 years ago, when the decision was being made whether to abort a child or bring a child to term, those kinds of discussions were engaged in. We know that. We know that the state supports, for a variety of legal reasons, whether or not that information should be exposed for potential litigation. But were there women in this province who put a child up for adoption who were given promises that the child would never be able to identify them? Yes, there were.

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However, I want to move a bit beyond that. I think that Ms. Churley, having read Ms. Cavoukian's comments into the record, would also recognize Ms. Cavoukian's resolute commitment in this area to protecting certain people's rights, and the privacy rights of individuals have not wavered for a second. I wouldn't want members of this committee, nor the Hansard record in and of itself, to suggest otherwise.

Mr. Parsons said that we can't legislate emotion but we can legislate process. I couldn't agree with him more. Most of the amendments I have crafted on behalf of my caucus have dealt with process, and trying not to stray from a series of principles that I and my caucus feel very strongly about.

Before there's any more impugning as to where we stand on a certain number of issues, I want to agree that I have yet to find anyone who doesn't agree that the idea and the action of bringing blood relatives together, for a variety of reasons, isn't in and of itself a positive activity. There's no question about that. I stated that when the bill was tabled. We did, however, say that on this very difficult issue certain principles need not be lost in the process. Therefore, we strongly support the exchange of information that will assist anyone with health matters. It'll help them define who they are both culturally and spiritually. I even suggest that the existence of siblings—I think that's all important information. I also believe it's important that, if you know there's no knowledge of who your father is, your mother was 14 when she was raped. Having that information is important. I'm not convinced that I need to know where that woman lives. I've heard very strong arguments that are emotional on their part, but weighed in the balance they include the support of the privacy commissioner of this province and, for the record, every single privacy commissioner in our country. If, as Mr. Parsons eloquently states, this is a made-in-Ontario solution, then I submit to him, as I have seen from the evidence, that citizens of Australia do not enjoy the level of privacy protection that we enjoy here in Ontario.

That is a concern. It's a concern because it doesn't fit neatly into this legislation, but it is a right of a citizen of this province and it was put in there for pretty valid reasons. It had a lot to do with making sure that people with AIDS didn't read about it in the newspaper because someone had access to their medical files. Yet we embrace the principle that they have the right not to disclose that. We give that right to new immigrants who come to this country; we give them that right immediately. So it is a strong piece of legislation, and we are toying with its legal principle in this regard.

The third area of concern that I have and that we're not fixing in this legislation, and we should be, is that children in this province have absolutely no rights whatsoever. I am deeply concerned about the manner in which the state—our province, the ministry, the minister—is positioning the responsibility of persons in authority to maintain accurate records that can be given to a child on the occasion of them becoming an adult in the eyes of our court. Ironically, that isn't necessarily 18. In some instances, the courts have upheld that it can be as late as 21 or 24, frankly. Those of you with experience with developmental disabilities will know that under certain circumstances, we have a taffy pull with that age. But the bottom line is, we still haven't made these children citizens.

Therefore, the fourth concern I have is that we are not providing adequate counselling to assist them with a decision we are about to entrench in law to force them to confront issues of their past.

Retroactivity, the sixth area: It offends some people on its legal face, and I don't wish to dwell on that, but I personally can understand it. If we're going to have legislation which will, in effect, bring consenting parties together who previously have been unable to do so, then the retroactivity issue has to be dealt with. I can understand that.

That brings us to the importance of the disclosure veto for those few people who require it, and we are told that in the many jurisdictions that have it, it's not routinely abused. We've heard numbers in around the 20th percentile of persons who invoke a disclosure veto. This is not rampant rejection. There is still plenty of work for others to go through the files, to cause matches to occur. To the extent that they can be a really positive experience in their lives, it's wonderful.

However, when I look at the report of the law reform commission in New South Wales, even they were flagged and were themselves concerned that the strongest opposition to the retroactivity followed by unqualified and unfettered access came from birth mothers who had conceived as a result of incest or rape. The report goes on at length to discuss areas where contact vetoes have or have not been effective. If the members haven't read it—and I'm not going to take time to read it all into the record—many were deeply offended that they had to pay a fine in order to register some kind of veto.

This is again from the analysis by the law commission: concern that some adoptive parents felt that

pressure groups had hijacked the debate leading to the legislation, that adoptive parents had no rights whatsoever under the legislation. They went on to comment about some of the observations about why the contact veto was problematic and why they've had to bring in a notice provision—something we will talk about, hopefully, in a few minutes.

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So I think it's important that Ontario has this legislation, but I also believe it has to have it done as a made-in-Ontario solution respecting the privacy rights of individuals. All those individuals—birth parents, adoptees, upon reaching the age of majority—should have the right to make those many matches, as is possible. But we cannot offend privacy rights on this front. If we do, we may as well begin the process of offending privacy rights in terms of health information and other matters of privacy.

I sense we're ready to—no, we're not? If you'd like to continue the debate, Ms. Churley, fine. I yield to Ms. Churley.

Ms. Churley: Yes, of course I'd like to continue the debate. Since we're not going to finish this in three days anyway, let's get some facts on the table.

Mr. Jackson: On a point of order, Mr. Chair: I think it's instructive to everyone that we will be finished at the end of three days because that's what the House leaders have told us. It will be deemed to have been completed on the third day, so any suggestion otherwise would be misleading.

The Chair: I'm pleased to hear that. Back to the floor.

Mr. Jackson: That's the House rules.

Ms. Churley: It seems that Mr. Jackson believes that therefore he should have the floor most of the time and the rest of us should not have it at all if we want to get to that point and to correct some things for the record.

I think it's important to say this every step of the way: When Mr. Jackson and others bring up a rape victim from many years ago who has concerns about being found, it should be comforting for them to know that if this bill is passed, there will be a contact veto. It should also be comforting for them to know—that's their position—that if their birth child were interested in finding them, it's most reasonable to expect, given that we know their surnames were more than likely on the adoption registration, that they would have been found by now. So while we raise those kinds of fears, it's important to put on the record and to say to people directly that that is, as already put out recently by the privacy commissioner, the reality of the situation.

I just wanted to refer briefly to the report that Mr. Jackson brought up by the New South Wales Law Reform Commission in 1992. The privacy commissioner refers to it as well, and I can assure you that I've read it from cover to cover more than once. The commissioner acknowledges that the LRC found the principal objectors to the new openness of adoption information to be adopting families. What she fails to mention is that the commissioner's report on the New South Wales Adoption

Information Act, 1990 was overwhelmingly, stunningly positive in terms of the act's principles, administration, effects and public acceptance. There were some concerns, as with any review, that were expressed, but the overwhelming thrust of that report was very positive. They documented some very interesting things. So again, because we've been quite selective here in the information that has been put out, I would urge everybody to take a look at the entire report.

I have in front of me something that was submitted to me by Karen Lynn. Her organization is working on this, and there will be more. In response to the previous question from Mr. Arnott about birth mothers, natural parents who were told by certain academics and others that they were promised anonymity from their children, here we have a list of 165 women, and my name is included on there, who have either reunited with their birth children or who are, tragically, still searching after many years—I won't read them into the record at this point because there are more coming; this is an ongoing project—telling the world publicly that they were not promised confidentiality. I think that should help Mr. Arnott as well in terms of women coming forward who actually lived through the experience and can tell us directly what they were told at that time.

The Chair: Further debate? If there is none, I will now put the question. Shall the amendment carry? Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move on to page 14. Ms. Churley, it's your motion.

Ms. Churley: I move that section 48.2 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection after subsection 48.2(5):

"Same

"(5.1) If the notice is withdrawn after the registrar general has given a copy of it to the applicant, the registrar general shall endeavour to notify the applicant that it has been withdrawn."

The Chair: Is there any debate on the motion?

Ms. Churley: If I could explain this very briefly, it's self-evident. Should contact notice be filed and a person changes his or her mind about that contact notice, there should be some process in place to notify an applicant that that notice has been withdrawn.

Mr. Jackson: I've raised the question several times about the ability of the registrar general's office to manage this kind of paper flow. I support the amendment. I have other amendments that deal with elements of notice,

as does Ms. Churley, but I'm not getting the level of comfort that the government understands that the department needs to be resourced in order to make this happen. Are we going to get support from the government for this motion and to the degree to which this represents an additional step? As you know, governments don't always like to get engaged in this, because failure to notify becomes an issue.

The Chair: I'm sure Mr. Parsons will make some comments on this. Mr. Parsons?

Mr. Parsons: No, our government cannot support this, for a number of reasons. I think that it's been actually articulated that it would require significant resources to commence this search function to find the parties and advise them. Given the challenges within the fiscal resources to manage the birth certificates and marriage and death certificate requests, this is not feasible, we think, from that viewpoint.

There indeed is the great potential of liability if a search is undertaken and is not successful. If there appears to be an obligation on the part of the government to find a party and they're unable to do it, it would certainly produce a question of whether the government is liable for that. So no, the government is a keeper of the records, but we don't believe it is reasonable or possible for the government to undertake a search function.

The Chair: Is there further debate?

Ms. Churley: I guess this does come at the nub of some of my problems with the bill, as you're aware: that there are certain obligations of the registrar general's office and the adoption disclosure agency that, for instance, right now, when there's a match made, there is an obligation for that department to contact. So there's a long, long waiting list, which is one of the problems, but at least there's an obligation to do that.

One of the big concerns that I have about this bill, as you know—and I do have amendments, and so does the adoption community, although we support the bill, obviously, in principle—is that all of the services that are now being offered by government are going to be stopped, like the so-called non-identifying information and this kind of activity. We want to know who, then, would be doing that. What is the plan, and who would be taking charge? Would this be a privatized service with a fee attached? How would it work?

1450

Mr. Parsons: I don't have an answer for that. I'm certainly of the understanding that it will not be a privatized service. Who will actually do it, whether it's a crown agency or part of a ministry, has not yet been determined. It's my understanding that it will be government of Ontario employees.

Ms. Churley: There are a lot of regulations to be written, and I know that there will be consultation with members of the adoption community. I would like to know if the adoption community will be brought in for consultation around these kinds of issues that we're talking about now, some of which are kind of hanging

out there at this point, and others that will need to be resolved for this new legislation to actually work.

Mr. Parsons: I'd like to refer that to the ADM.

Ms. MacDonald: Ms. Churley, yes, it is our intention to consult extensively with the adoption community with respect to any and all regulations contemplated under this bill if it is approved. We have made that commitment to the adoption community, and I'm happy to reiterate it now.

As Mr. Parsons says, the form of organization that a custodian may take, whether it's an agency of government or part of a ministry of government, is yet to be determined, but it is certainly intended to be a government function.

Mr. Jackson: It is clear, though, from the prior consultation that this is a very important issue for the adoption community, and it currently isn't found as a protection in the legislation.

Ms. MacDonald: I'm sorry, Mr. Jackson, I'm not clear on what your question is.

Mr. Jackson: It was clear from the consultation round that the adoption community has expressed concern about access to these kinds of services, and they are not included in the current framework of the legislation.

Ms. MacDonald: If your question to me, is, sir, was there consultation on some of these aspects, and were—

Mr. Jackson: No. Let me do it a third time for you. During the consultation process, when the adoption community came forward and spoke to government, this issue was raised that Ms. Churley has raised. It's been raised with me, it's been raised with her, and it's been raised by them that they're not expecting a simple librarian as a custodian of hard records; they are expecting somebody who can facilitate information for people who just want to be available for contact and don't necessarily want to engage in the dynamics of seeking out and doing the search. There are other implications to this.

You're fond of indicating how much consultation. I'm just asking, are you aware that that was a request made by the general adoption community: yes or no?

Ms. MacDonald: I am aware that that was a request made during the consultation by the adoption community and that doubtless there will be many other opportunities to have discussions on this topic.

Mr. Jackson: And the second part of my question: It's clear with the government amendments, as we have them before us, that there is no guarantee that that is the kind of—I have to memorize this—custodian function that will occur, guaranteed in legislation.

Ms. MacDonald: I would not be in a position to guarantee what the government might wish to do, sir.

Mr. Jackson: Yes, I guess, but that's not answering my question. You are aware of the government amendments; you've seen them all?

Ms. MacDonald: Yes, sir.

Mr. Jackson: Very good. So the ones that are currently before us, and given that the Liberals have indicated that they aren't bringing any more in, as it sits

now, this kind of a concern will not be met as a legislated requirement.

Ms. MacDonald: The amendments, as they stand, would allow for regulation-making authority, which could address who can search, what kinds of searches, for what purpose, for what individuals; it would allow for regulations for the setting out of the business processes of the custodian; and it would allow for the setting out of the business processes of the Child and Family Services Review Board.

The Chair: Is there any further debate? If not, I shall put the question to a vote. Of course, it will be another recorded vote. Shall the amendment carry?

Ayes

Arnott, Churley, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

The next one has been withdrawn. Therefore, we will be going to 15b. Is that Mr. Parsons? Section 48.2(11).

Mr. Parsons: Legislative counsel should have advised you, I believe, that because 15b refers to 15 and 15 was withdrawn, there's been a technical adjustment, removing the reference to amendment 15.

I move that section 48.2 of the Vital Statistics Act, as set out in the bill, be amended by adding the following subsection:

"Mandatory delay in disclosure

"(10) If the registrar general receives notice that the Child and Family Services Review Board has given him or her a direction described in subsection 48.4(7.1) or 48.4.1(6), the registrar general shall comply with the direction."

The Chair: Therefore, please note the number change. Any debate?

Ms. Churley: I'm sorry. I missed the explanation for this. I was reading something else. Can you tell me the impact of the withdrawal of motion 15? Does this replace it, and what exactly does it do?

Mr. Parsons: What 15b does is say that when the board refuses to issue an order prohibiting disclosure, the Office of the Registrar General requires the authority to delay providing the information to the party that requested it in order to give the other party the time to prepare and become mentally ready for the information to go.

Ms. Churley: Thank you.

The Chair: Any further debate on this amendment?

Mr. Jackson: We are leaving to regulation the amount of time, correct? Secondly, we are only delaying whether or not there is a—so it includes people who apply and fail, as well as those who apply and succeed?

Mr. Parsons: It's for people who apply and fail, who had an expectation that their identifying information

would not be disclosed, and the decision is made that the information will be disclosed. This provides the adoptive parent or the adoptee to prepare for that disclosure. But the Office of the Registrar General has no authority without this to delay the sharing of this information. It provides that office with the authority to delay it.

Mr. Jackson: Fair enough. Why are you only giving it to persons in this instance and not to all persons?

Mr. Parsons: The legislation provides the possibility for an adoptee to have their information not shared where it would present a risk to them.

Mr. Jackson: Got that.

Mr. Parsons: Because that's the only group that has that—

Mr. Jackson: Let me be more clear. The provision in the act in New South Wales is that all persons get the opportunity for a delay so that they can be forewarned or forearmed, whatever.

1500

When I read the New South Wales document, a lot of times people didn't file a request for a veto for a series of reasons. But in all cases in that jurisdiction, they were notified that someone was seeking their information. I think we're going to get in trouble with this principle. It'll be one of the principles that'll be argued in court, and it might be helpful if we considered allowing that just as a process of delay. That principle exists with the information and privacy commission now for all matters that we are subject to, and the rest of the world. There is a notice provision and a disclosure timetable. I think we're highly at risk in this whole business because we're not providing it on something of this magnitude, and I'm sure any of the learned judges will put it in that category.

I have expressed my interest and my bias in favour of if we aren't going to have a veto power, and it is just for those narrowly defined—and we've done that—it should exist for everyone that the state says, "In two months, we're going to be disclosing your information." I think if you've agreed to it here, I'm at a loss to understand why you don't embrace it as a legal principle and as a means of assisting people—hundreds of letters that you've all read and are causing a lot of discomfort. I'm just trying to understand why we're not offering that. I've got an amendment further on that which says that we will notify people. But that's simply so they can get their house in order and not have the surprise.

I'm not arguing with you; I'm just trying, at least in this area, to get an accommodation. I know it's more work, and it concerns me that it may be an issue, but lives are going to be crushed here—that's unavoidable—but at least if we give them notice. Just to be sure, when Ms. Churley was saying it was embraced so enthusiastically in New South Wales and she quoted 1990, that's when the legislation came in. The review occurred two years later, and the subject we're talking about came out of that review. I'm not discrediting the New South Wales legislation; I'm just saying that, upon sober reflection, this is something they put into their legislation.

Mr. Parsons: I apologize for coming to this committee meeting not familiar enough with the New South Wales legislation to debate it. We believe that the advertising campaign advising the people of Ontario of the change in legislation and the process that will be followed is in fact notice to all parties to be able to prepare them for the change in the processes required.

This one is very specific for a reason. This is because an individual, whether it be the adoptive parents or whether it be the adoptee, have made a request or a case for their information not to be disclosed, and I think it's fair to say they probably made it with some expectation that it would be granted. Psychologically, they have probably leaned toward the side that the information is not going to be given. So we're not talking generalities here; we're talking about a particular individual who says, "I've put in my case, and I think probably it won't happen." But then they hear back that, no, the information will be shared. So where someone has built up an expectation one way, it is only proper that they be given some time to adjust to the actual situation that's going to happen.

Notice to everyone that it could happen: that's because of the bill and the extensive advertising campaign. But this one focuses on particular individual cases where they have thoughts that turned out to be contrary to reality.

The Chair: Any further debate? Yes, Mr. Jackson.

Mr. Jackson: With all due respect, Clayton Ruby and his client are still filled with the same resolve they were four months ago. You will not be allowed to advertise this legislation because it will not become law, and it's the subject of a judicial review.

I'm starting to become a little more uneasy about the selective embracing of the work done in New South Wales, which is set out as being so good, and yet those elements that are sensitive to the needs of the public who are concerned about the legislation seem to be glossed over. I have an amendment, which I will be tabling in a moment, which deals with that issue, and we will speak to it.

It is now a matter of public record, which would ultimately find its way into our courts, that we can't afford it. That's generally instructive to our learned ventures. I'd be happier if the mandatory delay in disclosure was a legislated right. The mandatory delay in disclosure could be 24 hours. I know what the discretion is. The reg will be written in such a way that nobody can ever sue that they weren't notified in sufficient time. However, we've crafted legislation in the past—labour legislation is classic in terms of what constitutes notice to people, and it's right in the legislation.

That puts a positive onus on the part of the government to meet that standard, because its purpose is to protect the public. Its purpose isn't to make the job easier and less litigious for the bureaucracy; the purpose is to protect the public. I dare say, none of us will get the chance to see the regs unless we read our mail that comes through our offices in the large pile we get every day that

includes those matters that were filed in our provincial courts as regulations for the province of Ontario.

There is not a process that will involve members of Parliament in dealing with those regulations. The minister may be guided by the debate on the subject, and may at her current discretion invite people in to comment. But there's no obligation under the law to involve anybody in the crafting of regulations which are approved solely by cabinet. Even cabinet ministers don't get to really see them, as I recall.

This should be strengthened by giving a specific time frame for notice. For those persons in northern Ontario and other areas, time is an important issue. I would respectfully suggest that this should be strengthened by giving a fixed period of time that's reasonable.

Apparently, in New South Wales, a judicial panel involving the public and the community at large came up with two months. I think that's more than reasonable. But I'm nervous about leaving this to the vagaries of a bureaucratic determinant as to when they feel it's necessary to delay the disclosure.

The Chair: Thank you. Any further debate? I shall now put the question. Shall the amendment carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott.

The Chair: The amendment carries.

The next one will be page 15c, as originally called. Mr. Jackson, it's your motion, I believe, section 48.2.

Mr. Jackson: I move that section 48.2 of the Vital Statistics Act, as set out in section 6 of the bill, be amended by adding the following subsection at the end:

"Agreement to prevent disclosure

"(11) Despite subsection (3), the registrar general shall not give the information described in subsection (1) to a birth parent if, before the adopted person reaches 19 years of age, a children's aid society registers notice of an agreement between the society and the birth parent preventing disclosure of the information to the birth parent."

The Chair: Any debate on the amendment? If there is none—

Mr. Jackson: Mr. Chairman, this raises the issue that I raised earlier on behalf of those women who in some instances with Catholic children's aid societies made the very, very difficult decision—and I can only imagine—to choose adoption over abortion. Those agreements, in my view, are legally binding. I cannot conscientiously put my hand to legislation that takes that away from a woman. I don't even know if my caucus knows I've tabled this. I just feel very strongly that that was a contract between a woman, her conscience and the state, and the state is about to violate it. And it is a contract.

The courts will determine this question themselves, but as a legislator I'm not going to sleep if I sit silently by.

The Chair: Is there any further debate on this amendment? If there is none, then I shall put the question. Shall the amendment carry? It's a recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move on to page 16.

Interjections.

The Chair: OK. We need a five-minute recess since another motion is to be written, so a five-minute recess, please.

The committee recessed from 1512 to 1520.

The Chair: We can resume discussions. We will start, as I indicated, on page 16. I believe it's Mr. Jackson's—

Mr. Jackson: It's 15d.

The Chair: So it's page 15d, not 16. Mr. Jackson, the floor is yours.

Mr. Jackson: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

"Notice, delay of disclosure

"48.2.0.1(1) Upon application, an adopted person who is at least 18 years old may register a notice of his or her request for a delay in the disclosure of information and documents under section 48.2 to a birth parent.

"Birth parent

"(2) Upon application, a birth parent may register a notice of his or her request for a delay in the disclosure of the uncertified copies and other documents under section 48.1 to the adopted person.

"Effect of notice

"(3) If a notice is registered under subsection (1) or (2), the registrar general shall not give the applicant under section 48.1 the uncertified copies or the applicant under section 48.2 the information described in subsection 48.2(1), as the case may be, until,

"(a) the registrar general has notified the adopted person or birth parent, as the case may be, who registered the notice of request for a delay in the disclosure; and

"(b) 60 days have elapsed after the notice described in clause (a) is given.

"Other matters

"(4) Subsections 48.2.2(3) to (8) apply, with necessary modifications, with respect to a notice registered under this section."

Having tabled that, I have spoken in part to this at some length. Just to briefly review, the principle of advance notice is one which other jurisdictions have embraced, specifically those that have embraced a retro-

activity provision and an unfettered access to information.

We have heard compelling arguments. I will read one of them back into the record, and I want the notion that people are going through immense emotional turmoil. They need to be given some notice other than in advertising on television, because again, the literature from New South Wales indicated that the level of awareness was still very poor, and even advertising campaigns are not going to deal with this issue. It's not like a person who has a secret is going to have six of their friends call up and say, "Isn't that great news that the government has done this change?" Most of these are secrets to many people.

Again, the case that was brought to our attention—it has been read into the record before—about the statement: "I was raped at the age of 17. I became pregnant after that and gave up the child for adoption. It would be a nightmare for me to have to face the whole situation." It goes on, and members are familiar with the desperate nature of that individual, but I don't wish to put it on the record again.

So many pleaded with us, "At least give us sufficient time." I know that, as hard as it is for some members to put themselves in the shoes of some of these individuals who do not wish to be contacted, many sit in fear every day that it could happen, but others don't because they know their records that are identifiable have been to a degree sealed. Ms. Churley has clarified that not every single record in the province is in that category. It's just that a very large number of them contain information that would be extremely helpful to create an immediate match.

One has to consider that the question people are going to agonize over is, "Should I disclose this to everyone and perhaps upset people, break somebody's heart, cause me to break my marriage or do any of those things on the sheer thought that someone may call? But if I know that someone is seeking me out"—and that's what is implicit here: You're being notified that someone has requested your information. Now you know that the process has begun and you can make the decision that, in effect, "Now that my privacy will be disturbed, I have to deal with it." But I don't think the legislation and an advertising campaign are going to change the hearts and minds of Ontarians who don't wish to deal with this. That's a very important distinction here. Clearly, in Australia they've come to similar kinds of conclusions about the impact. Had we had progressive legislation years ago and had all adoptions for the last 20 years been fully disclosed, there wouldn't be this kind of problem. It just so happens that those records that aren't easily accessible are predominantly much older files, and there are people who are rather well advanced in their ages who are concerned about these matters.

I think the members have heard my concerns in this area. It's clear that the government is not looking for work for this registrar general. But good legislation should be defined on behalf of citizens as to its effect,

and it should be defined on how it helps our citizens and not by how easy it is for our bureaucracy, which is about to shrink considerably in this instance, and about how dwindling resources are preventing us from doing the right thing in this case, which is to let people know that when an application has been made, the government will be releasing their privacy records. Again, this right exists under certain circumstances in our courts, this right exists in certain circumstances for women in our court system who are victims, and it exists under very limited cases with respect to health information, but the principle of notice is the principle here that we're desperately trying to make sure finds its way into the legislation.

Ms. Churley: I actually don't have a problem with this amendment. We're talking about 60 days here. There are circumstances, very limited circumstances, but it could be important for some people, and we're not talking about a lot of time.

I would point out that for section 48.2.0.1, "Upon application, an adopted person who is at least 18 years old may register a notice of his or her request for a delay in the disclosure of information," if I'm correct, this bill is the same as my bill in that there is a year's delay and it actually kicks in when a person turns 19. Is that correct? Am I right on that, that there is a year's delay anyway within this bill too?

Ms. Krakower: Yes, you're right.

Ms. Churley: OK.

Interjection.

Ms. Churley: Well, I don't know if it matters in terms of what you're trying to do, but that year is given just to give a person time once they reach adulthood at 18, so there is that year's time for the person to go through the process. I don't know, within the context of this motion, if it makes any difference. I don't think it does.

Ms. Yack: At 18, the adoptee can register notice, and the birth parent cannot get access to information until the adoptee is 19.

Ms. Churley: Yes, that's right.

1530

Mr. Parsons: Many of us, as members, have mailed out newsletters or items of interest to a substantial number of people. I think one thing that always impresses me is how many people have moved since the last mailing. We live in a highly mobile society, and I always get significant numbers of letters back where the person is no longer there.

This amendment, again, does what I expressed caution and opposition to earlier: This requires the registrar general to undertake a search function, to staff themselves and to expose any government to liability if they are unable to find that person. I can't support the amendment because I do not believe realistically that the resources are there to do a search function to find the adopted person or birth parent. It is not physically possible. I do not support the motion.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry? This is a recorded vote.

Ayes

Arnott, Churley, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment on page 15d does not carry.

The next one is page 16. Mr. Jackson.

Mr. Jackson: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

“Disclosure veto

“Adopted person

“48.2.1(1) Upon application, an adopted person who is at least 18 years of age may register a disclosure veto prohibiting the registrar general from giving an applicant under section 48.2 the information described in subsection 48.2(1).

“Same

“(2) A disclosure veto under subsection (1) shall not be registered until the applicant produces evidence satisfactory to the registrar general of the applicant’s age.

“Birth parent

“(3) Upon application, a birth parent may register a disclosure veto prohibiting the registrar general from giving an applicant under section 48.1 the uncertified copies described in subsection 48.1(1).

“Withdrawal of veto

“(4) Upon application, the adopted person or birth parent, as the case may be, may withdraw the disclosure veto.”

The Chair: Any debate on the amendment?

Mr. Parsons: This is yet another amendment that has the effect of destroying the bill. This is an amendment that would remove the rights of birth parents to have access to information regarding their child. It is 180 degrees counter to the intention of the bill to restore right of access to information. I cannot support it.

The Chair: Any further debate? If there is none, I will now put the question. Shall the motion carry? A recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Wynne.

The Chair: The amendment does not carry.

The next one is on page 17, by the government. You may read the motion.

Mr. Parsons: I move that section 6 of the bill be amended by adding the following section to the Vital Statistics Act after section 48.2:

“Disclosure where adopted person is deceased

“48.2.1(1) A child of a deceased adopted person may apply to the registrar general for an uncertified copy of the original registration, if any, of the adopted person’s birth and an uncertified copy of any registered adoption order respecting the adopted person.

“Age restriction

“(2) The child of the adopted person is not entitled to apply for the uncertified copies until he or she is at least 18 years old.

“Disclosure

“(3) Subject to subsection (4), the applicant may obtain the uncertified copies from the registrar general upon application and upon payment of the required fee, but only if the applicant produces evidence satisfactory to the registrar general of the applicant’s age and identity and otherwise complies with the requirements applicable to obtaining a certified copy of any birth registration.

“Restrictions, etc.

“(4) Subsections 48.1(3.1) to (10) apply, with necessary modifications, with respect to the application.”

The Chair: Mr. Parsons, I have to declare this amendment out of order, and the reason is that it is an established principle of parliamentary procedure that an amendment is out of order if it is beyond the scope of the bill as agreed to at second reading. This amendment proposes to expand the class of people covered by the bill beyond what is set forth in the long title. Therefore, I would declare this not to be in order.

Mr. Parsons: I express my regret.

The Chair: Of course you can, or you can ask for—

Ms. Churley: I wanted to ask a question about—

The Chair: Let me deal with Mr. Parsons and then I’ll recognize you.

Mr. Parsons: Yes, because not accepting that this restricts the rights of a certain group of citizens. At the present time, adult children of non-adoptees can access the birth information on their parents. What this amendment would have done, had it been accepted and passed, was it would have provided the adult children of adoptees that same right to access the information. It levels the playing field, because to not accept it leaves one group with fewer rights than the other. Is there a mechanism or an appropriate place to deal with this, to provide equal rights?

The Chair: I suspect that if you ask for permission from this committee, if there is unanimous support, there is a possibility. But nonetheless, why don’t you think about that while I recognize Ms. Churley and see what her comments are. You may want to do that.

Ms. Churley: Mr. Chair, that’s what I wanted to ask. If there’s unanimous consent from this committee, can we then deal with the amendment?

The Chair: You’re asking for it, and I will ask the question.

Ms. Churley: Yes, I am asking for unanimous consent.

The Chair: Do I have unanimous consent?

Mr. Jackson: A question of clarification: You’re saying that the children of a deceased adopted person at

18 will have access to their mother's or their father's records that the mother or father may have never seen. Am I getting that right?

Ms. Laura Hopkins: Mr. Jackson, I believe that the effect of this is that the child of the deceased adopted person would have access to the adopted person's birth parents' records.

Mr. Jackson: OK. So that means if the parent of the child, who the Chair says is outside the scope—if the mother hasn't disclosed to the children anything at this point, the kids will now be able to find out about, on behalf of their deceased mother, what information—

Ms. Wynne: Grandchild.

Mr. Jackson: The grandchild will then be able to—well, I guess—

The Chair: Let me ask this question: I know you're trying to appreciate the motion, but do we have unanimous support to entertain the motion or do we still want to ask questions? Let's see if there is unanimous support.

Mr. Jackson: At this moment, there is not unanimous consent.

The Chair: OK. Then continue.

Mr. Jackson: There are the issues around grandparents' rights, and I haven't thought that through in terms of legislative initiatives that are occurring in family law and I'm not even sure this has been thought through on the part of the government about its impact, or some of those legal cases that are finding their way on to our desks right now on matters of custody and support. You're moving into an area which can impact that by virtue of entrenching, for the first time, grandchildren's rights.

I'm not saying no; I just need to think this through. This is huge in terms of—

The Chair: Mr. Jackson, let me understand what's happening.

1540

Mr. Jackson: You understood me correctly. At the moment, it does not have unanimous consent.

The Chair: So then there is no need to discuss the matter any further. If there is unanimous support—

Mr. Jackson: Thank you, Mr. Chairman.

Mr. Parsons: Only to clarify, because I think there's a misunderstanding—

The Chair: Well, then I'll be happy to hear from you before we move on.

Mr. Jackson: You've ruled, Mr. Chair, and there is not unanimous consent.

The Chair: Mr. Jackson, if we can continue—

Mr. Jackson: I can begin the debate.

The Chair: Excuse me. Until today, we had been trying to understand what we were doing before ruling. Maybe it was my error in not giving more time to Mr. Parsons to explain his amendment. If you'll allow me, I would ask him to clarify anything that he would wish to, and then I will ask again if there is unanimous support. If the answer is no, we will move on to the next one, because we cannot debate something that is not properly on the table.

Mr. Parsons: I want to explain what it is, because the information that's been shared at the table is not quite correct. This would allow the child of a deceased adopted person to access the deceased's birth record—not the grandparents, but the parents. The rationale for that is not just to provide equity, but if an individual has a health problem, we've been thinking to this stage that they need to access their natural family. But if the parent who has that information is deceased, this will enable them to get the information as to who their birth parent was and potentially open the door for them to start down the chain, then, to find a relative who can share the medical information with them. Without this, if an adoptee dies, the children lose all access to that chain of information. We're not talking grandparents' rights; we're talking rights to get the information on their parent.

The Chair: Are there any questions or comments, to make sure that we appreciate what Mr. Parsons is proposing? I recognize Ms. Churley and then Mr. Jackson, only for questions. I don't want to hear any comments, please, at this point. The floor is yours.

Ms. Churley: I would suggest that we stand it down if the Conservatives need to look at it a little more. My question would be, have you heard from a lot in the adoption community that this was a gap in the bill, a serious problem with having so many older people—

The Chair: Excuse me.

Ms. Churley: —it's a question—and is that why it's put in?

The Chair: Excuse me, Ms. Churley; I want to get some order here. The only question that I'm going to allow at this point is to clarify what the motion is saying. If we are trying to look for more facts, I don't think this is the right place, because there is no motion on the floor. Can we just—

Ms. Churley: I understand that; I do. The Conservatives were able to put on the table in great detail why they were opposing it. Because that's happened, I think it's only fair that, at the very least—could I, in this context, ask that we put it aside until the Conservative members can look at it?

The Chair: Let me see if Mr. Jackson has a question, and then I can do that.

Ms. Churley: Could you do that? It's very important.

The Chair: Mr. Jackson, before you ask anything, please limit yourself, if you can, only to specific questions on what the motion is trying to do, and then we'll move on.

Mr. Jackson: As I understand what Mr. Parsons has shared with us, the child referred to here of a deceased parent would know the medical history of their mother or their father. They would have all relevant medical information about their parent.

Interjection.

Mr. Jackson: Of course not—well, no; they've turned 18. There's a presumption here that the natural-born child of an adoptee—

Interjection.

Mr. Jackson: Let me finish, Ms. Churley. I'm trying to—

Ms. Churley: Well, are we debating this or not?

The Chair: We are not debating this.

Mr. Jackson: I was asking a question, until I was interrupted.

The Chair: You still have the floor for a question.

Mr. Jackson: I'm asking if I'm understanding correctly. Mr. Parsons said that it's for medical records. Fine. But it's not the medical records of the grandparent; it's the medical records of the mother.

The Chair: Is that the case, Mr. Parsons?

Mr. Jackson: That's what I heard you say.

Mr. Parsons: Yes.

Mr. Jackson: So if I'm the child who's now of majority, and I have known my birth mother for at least 18 years—she's been alive on this earth, or whatever—

Mr. Parsons: Maybe not.

Mr. Jackson: —or maybe it's 35 or 40 years, whatever—then I would be probably aware of my mother's medical condition. I would have no idea of my grandparents' medical records. I think the concept may be noble, but I'm trying to understand if it gives the effect that you're seeking. That's all. That was a question, and I believe it's been clarified. Thank you.

Mr. Parsons: No, it's not.

Mr. Jackson: No?

Mr. Parsons: The parent may have been deceased for years. There can be a 19-year-old whose birth parents have been dead for 18 years. So they've not had access, but now they want access to who their parent was.

Mr. Jackson: By your example, if they died when they were one year old, which was the example you just gave me, they've got to wait 17 years before they can have access to it?

Mr. Parsons: Yes, that's correct.

Mr. Jackson: How weird is that?

Mr. Parsons: Better than nothing.

The Chair: I will ask the question again: Is there unanimous consent for this amendment, yes or no? None. There is none. So there is no motion on the floor.

Therefore, shall section 6, the entire section, as amended, carry?

Ayes

Churley, Fonseca, Leal, Parsons, Wynne.

Nays

Arnott, Jackson.

The Chair: Section 6, as amended, carries.

We are moving to page 22, which is section 8.1. It's a new section. I believe, Mr. Jackson, you did introduce or give this motion.

Mr. Jackson: I move that the bill be amended by adding the following section after section 8:

“8.1 The act is amended by adding the following section:

“Public notice

“48.4.1(1) The Minister of Consumer and Business Services shall ensure that notice of the following matters is widely advertised in accordance with this section in daily newspapers and on the ministry's Web site:

“1. The changes made by sections 48.1 and 48.2 relating to the disclosure of adoption-related information to adopted persons and birth parents.

“2. The process for registering a disclosure veto under section 48.1 or 48.2.

“3. The process for registering a notice under section 48.3 that an adopted person or birth parent does not wish to be contacted.

“Same

“(2) Notice of those matters must be advertised 120 days, 90 days, 60 days, 30 days and seven days before sections 48.1 to 48.4 come into force.”

The Chair: Is there any debate on the amendment?

Mr. Parsons: With due respect, we believe this more appropriately belongs in the regulations. This is an operational matter, not a matter for the bill, which deals with the philosophy and principles of adoption disclosure.

The Chair: Thank you. Is there further debate? Mr. Arnott?

Mr. Arnott: Clearly, the amendment makes a point that there needs to be substantial public information; there needs to be advertising. What exactly is the government's commitment? If they claim that it's going to be dealt with in regulation, surely they must have a plan to publicize the passage of this legislation, assuming they do pass it. What exactly is the commitment?

Mr. Parsons: I think there's a tremendous obligation on the part of the government to extensively advertise this for some time. A wide advertising campaign over a month would not be sufficient, because people not only need to know about it, but they need to psychologically prepare themselves for the changes. Whether the advertising campaign is 10 months or 14 months, I think, is better left to the regulations stage and to the people who implement it, but failure to do it extensively over a period of time would destroy the spirit of the bill. I'm not prepared to commit to the number of ads or the exact time frame, but I am prepared to commit that it will be extensive.

1550

Mr. Jackson: There are two parts to this. One is a loosely defined schedule. The other is that certain sections have to be highlighted, and, in my view, it's not uncommon for advertising agencies for the government to put the best face forward on these matters. Let's just give an example: In my wildest dreams, I don't think anybody's going to expect the government to say that this bill is controversial with the privacy commissioner. It won't have a disclaimer saying, “There may be concerns for privacy and you may wish to seek legal counsel.” The advertising will be at a very superficial level, saying,

"Call this 1-800 number or check this Web site and you will see how wonderful this legislation is."

I recognize that's the right of the government. However, again, when we read some of the anecdotal references from the law commission in Australia, they talk about advising people properly of their rights under the legislation. Will the legislation specifically say that all adoptees now have the right to have access to identifying information and matches will be made? Maybe, but I doubt if it's going to say, "If you were sexually assaulted or you were physically abused, or if you were the ward of the children's aid and in child protection, you have a right to be notified." Again, I doubt that that's going to be in there. This is going to be a picture of a nice suburban property, there'll be a knock at a door, somebody with outstretched arms is going to cry "Mommy," the two will embrace to a background of soft music, and then it will fade to the logo of the province of Ontario. That's what we're going to get. You know what? OK. I think we've been given a bit of a mandate here since we've acknowledged, begrudgingly on the part of the government, that there are people whose personal lives will be put at risk, either physically or emotionally, at the prospects of disclosure and/or contact. This is in here because the advertising has to include this.

I recognize this isn't the norm, but we have had legislation before that references full disclosure to the public. If you want me to delete the section saying "notice of those matters," I would consider that amendment, so that I'm not obligating the government to how many of these images that the government would like to convey. I want to make sure we embrace the notion that we're honest with the people of Ontario when we include the fact that under limited circumstances, you can apply for a veto. I'm not a betting person under any circumstances, frankly, but I'm trying to fathom something that I could offer. I have the utmost confidence that you're not going to deal with this issue when you talk about your new legislation.

That's really what the issue is here, and I'm prepared to drop the frequency of dates since that is Mr. Parsons's concern. In fact, I'm going to do that right now, Mr. Chairman, and I would just simply want to make sure that those issues that speak to the issue of protecting persons and providing them notice that there is an appeal they can file—that that finds its way into the advertising. Thank you, Mr. Chairman.

The Chair: I thank you, and I'm going to double-check legally if that is possible, what procedure to take.

He has dropped a section of the amendment. Would that be OK, or should we go through another formality?

Mr. Jackson: Technically, I could separate my motion and ask for that. That's a long, cumbersome way and then we get to vote in each section. I'd prefer just to—

The Chair: Normally, I agree with you, that that's the case, but I want to make sure that at this level, at Queen's Park, that it's proper. Mr. Parsons, do you have some comments, and then legal will look into it in the meantime?

Mr. Parsons: I have more faith in the ministry staff than the member does, evidently. If I look at the advertisements and information being shared by our government over the past two years, I am quite frankly proud of the lack of partisanship and the lack of glitz in it. It is our belief that the more open and more clear these ads are, not only is it better for the people of Ontario, but it is an easier workload for our government and for our staff. I have no doubt that every step will be taken to provide as much information as possible to the public so that they are able to make informed decisions and, when they do contact us, they will know the right questions to ask. It is in everybody's best interests to be as descriptive as possible in the ads.

The Chair: Can I then have staff explain what would be the best way to proceed? Then we'll decide what to do.

The Clerk Pro Tem: Procedurally, Mr. Jackson should move that as an amendment to the motion, which will put debate on that and debate back on the amendment. If there is consent to withdraw his and have it deemed removed without the bottom section, that will get us right back to where we are now.

The Chair: And then we can proceed whichever way you want. I think that would be the easiest way; otherwise there will be two discussions at once.

Do I have unanimous consent that Mr. Jackson's suggestions be accepted? I do.

The motion on the floor is that Mr. Jackson suggested removing the section. Is there any further debate on that motion?

Mr. Jackson: I was asking Mr. Parsons if he objects to including reference to the access to the veto information as part of the advertising.

Mr. Parsons: I simply don't believe it's necessary. I think it's an inappropriate precedent to include regulation-type material in a bill.

Mr. Jackson: Well, it's a section of the act.

The Chair: Sorry?

Mr. Jackson: Just for clarification, it's not a regulation; it's this section of the act that advises the public of their rights under the act. So that has to be included in the advertising.

The Chair: Any further debate? If there's none, I shall now put the question. Shall the motion carry?

Ayes

Arnott, Jackson.

Nays

Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry. The next one is section 9, page 23.

Mr. Parsons: I move that section 48.5 of the Vital Statistics Act, as set out in section 9 of the bill, be

amended by striking out “sections 48.1 to 48.4” and substituting “sections 48.1 to 48.4.5.”

This is a technical one. It empowers the registrar general to unseal the records that had been sealed.

The Chair: Any debate? If there's none, I shall put the question. Those in favour? Recorded vote.

Ayes

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment carries.
Shall section 9, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal.

Nays

Arnott, Jackson.

The Chair: The section, as amended, carries.

We are going to a new section, section 48—I'm trying to figure out who will introduce it. Mr. Jackson.

I think we have a friendly motion here.

Should I ask who wishes to introduce it? Mr. Parsons, do you have any problems with Mr. Jackson—Mr. Parsons, you have the floor.

1600

Mr. Parsons: I have 24 as a government motion, if I could move it.

I move that the bill be amended by adding the following section after section 9:

“9.1 The act is amended by adding the following section:

“Review re disclosure of adoption information

“48.6 The Lieutenant Governor in Council shall ensure that a review of the operation of sections 48.1 to 48.5 and section 56.1 is conducted within five years after section 9.1 of the Adoption Information Disclosure Act, 2005 comes into force.”

The Chair: Thank you. Is there any debate on this amendment? Mr. Jackson?

Mr. Jackson: I'm just trying to check against the previous one—“48.1 to 48.5” covers 48.5, so that is covered. And 56.1: Operationally, what is that section? Could somebody help me out?

Ms. Yack: The offences provisions.

Mr. Jackson: OK.

Mr. Arnott: Mr. Chairman, I'm just curious as to who would conduct this review and why the government has determined that it would be appropriate to review after five years as opposed to, say, three years.

The Chair: Mr. Parsons, do you have an answer to that?

Mr. Parsons: I'm assuming that it will be the Minister of Community and Social Services or their designate responsible for the review. It's intended to catch any

glitches or gaps that have existed in this legislation. Although we believe this legislation addresses all of the concerns, the reality is that we know there may be other things that will come to light. Five years is considered a traditional length of time to have identified problems that occur within a bill, so that's why it's five. It seems to be a fairly traditional number.

Mr. Jackson: We have heard on three separate occasions just today that the ministry is really short of resources, and the only real forum that seems to have any resources is a legislative committee. So I would ask to get assistance to ensure that the review is done by an all-party committee as opposed to an internal review by the ministry. As we know, the way this is worded, there isn't a guarantee that it will be made public; it just requires that someone does an internal review. So I would need some assistance to make the review public and that it be done by a legislative committee. There are umpteen dozen examples for us to draw from.

Mr. Parsons: I can recall on three instances referring to the challenge in resources for the registrar general, but the intention of this would be for the Ministry of Community and Social Services to be responsible. In terms of resources, the individuals who assisted in the preparation of this bill are probably the best people to deal with any changes that need to come. The Ministry of Community and Social Services is tremendously underfunded and needs more resources—right?—but I don't recall saying that. This is an extremely important bill. Resources were found to bring it into place now, and resources will be provided if there is a need to tweak it at some time.

Mr. Jackson: This is unacceptable. The notion that a ministry which is about to rid itself of a substantive amount of responsibility in the subject area is going to evaluate its impact is rather unusual in the province of Ontario, but in effect that's what we're doing. I'm sure the auditor, if he does get to this program at some point—and he may, and may choose to do so before the five years—he will look back and say, “What were we thinking?” The precedents that I could quote ad nauseam are that the review not be undertaken by the very people who are responsible for its discharge any more than we should ask the children's aid societies to do an evaluation about how well they've handled the disclosure.

The principles, if we're going to do this, are that it be a public document, which this does not require it to be, and that it be done with some degree of independence. Even the much-touted New South Wales effort was independently reviewed, and in two years. It came in in 1990. By 1992, they were already beginning to look at ways of strengthening and improving it.

The sections that you're dealing with, in terms of potential for filing permission to have a veto, are unproven legislatively. Those should be evaluated with the input of the public generally, and with the legislative committee—that is a foregone conclusion. There is no requirement—and I can give you some examples of legislation that is reviewed that does not require any

contact whatsoever with the public. In my view, this allows the government to say, "We're going to review it in five years." But that would be deeply misleading, because they're not; they're letting their bureaucrats evaluate it for them.

I have to stand this down until I can craft an appropriate amendment that I think better reflects the wishes of the adoption community. I have whole sections here that the adoption community is quite concerned are missing from this act. I know that they are concerned. They will probably be consulted—I'm not impugning any motive there—but they can only be consulted about those items that fall within the scope of the legislation that we are in the process of approving before Friday afternoon.

Under a review, all matters then become available for us to review, and we can embrace the adoption community, and Ms. Churley can fly in from Ottawa and make a presentation.

Interjection.

Mr. Jackson: Listen, she may think I'm a disgrace—

Interjection: She didn't say that.

Mr. Jackson: She did say that—but I still think the world of the person, and will continue to.

Ms. Churley: You're predicting my victory.

Mr. Jackson: Well, I think you'd be a good addition to any House, the federal one included.

Having said that, I feel very strongly about this. Let me put it to you another way: There's absolutely no need for us to approve this, because they don't need to put that in the legislation. As a former minister, if I wanted to review something, I merely had to issue it as an order. What is of concern to me is that they are only reviewing the operational components, so it's an internal review of operations by the very people who are required to.

I hate to say it, but a good minister is supposed to be on top of this anyway. Good, strong bureaucrats in the department should be on top of it. If there is concern that they are incapable of being able to handle it, that's another issue, or if they feel the resources will be so badly impacted in Comsoc that they have to have this in order to protect any ability to evaluate their programs in these key areas, I think this says that we as a Legislature aren't interested, nor is the government interested, in reviewing anything about this bill, save and except the narrow sections of 48 and 56.

1610

So I respectfully request that it be stood down until we can craft something that, in my view, reflects more what the adoption community is seeking in terms of an ability to input. You may find operationally that there are serious problems associated with the quality of the information, that the whole custodian component that the government has isn't working and that we actually have almost an impediment to creating matches because that arm of the government that was required under the current law to assist wasn't assisting any longer.

I think this should be done in an open forum and it should be done in an accountable forum. Both of those describe the process that we're currently in.

The Chair: Mr. Jackson has asked that we stand it down. Do I have unanimous support to stand it down? Yes or no?

Ms. Churley: May I ask a question?

The Chair: A question, yes; no comments.

Ms. Churley: The question would be whether or not, if this is passed as is, there cannot be more in dealing with the adoption community through a more fulsome regulation about a review of the entire—or whatever parts. Could that be done through regulation after consultation, or do we need to get it in legislation? It's my understanding that a review can come at any point, as long as there's—

The Chair: Staff?

Ms. MacDonald: It would not be normal to deal with it in regulation, Ms. Churley. An example I can draw for you as a parallel: The ministry is currently completing a five-year review similar to this, under the authority of the minister, of the college of social work and social workers act. That is a review being conducted by the minister under the minister's authority, using an outside consulting organization in addition to staff support. But normally you wouldn't spell that out five years ahead of time or in a reg.

The Chair: Is that clear? Do I have unanimous support to stand it down? I do. Thank you. It is stood down.

The next item is section 10, page 24a. Mr. Jackson, please.

Mr. Jackson: I move that subsection 56.1(1) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by adding at the end, "or a birth parent's spouse, parent, child, sibling or any other member of the birth parent's family, either directly or indirectly."

The Chair: Is there any debate on this amendment?

Mr. Jackson: I need to see my copy of the act.

Interjection.

Mr. Jackson: Could legislative counsel lend—me, for sure, and maybe Ms. Churley, a copy—I've got this huge binder, and I don't have my act in front of me. I'll just borrow it briefly. Thank you.

I'll just read for the members. Subsection 56.1(1) speaks about, "If ... an adopted person receives notice that a birth parent does not wish to be contacted, the adopted person shall not knowingly contact or attempt to contact the birth parent, either directly or indirectly." What I've indicated is that if we have a no-contact veto, that no-contact veto prevents the individual from contacting the birth parent's spouse, parents, the child or sibling or any other member of the birth parent's family, either directly or indirectly. We heard, on many occasions, groups saying that in other jurisdictions, the problem was that people would avoid talking to the birth mother but would contact her husband or would talk to other sons and daughters. This is an important question, because what ultimately is the purpose of a contact veto? If the purpose of a contact veto is to be some sort of legal sop to the community at large, then fine; we can leave it the way it is. But if in fact we, as legislators, are

genuinely concerned that the adoptee can get identifying information but they are required by law not to invade the personal privacy of the subject person and their immediate family, I want that coded in legislation so that the \$50,000 fine would apply to all those individuals.

Mr. Parsons: We believe that's in the legislation now and that it requires that if there's a no-contact indication, one cannot contact either directly or indirectly. I don't think there would be any question that contacting a relative or a sibling would be interpreted by a court as indirect contact.

We believe this is not necessary. It is already covered under the indirect contact requirements.

Mr. Jackson: The legal opinion that we received is that "directly or indirectly" means that you cannot come into personal contact. There are two separate legal issues here we're raising. The legislation says that you can't hire a third party to walk up to your mother and say, "Hello, I'm here." That's what "directly or indirectly" means, because it flows from the individual. It's the access point to that person. Why this is in other legislation is that it includes immediate family members.

I have letters on file that say, "They went to my next-door neighbour. They had tea with the next-door neighbour. The next-door neighbour told the whole neighbourhood." We can't build legislation like that, but I think it's deeply, deeply disturbing that the first people who are going to find out about it are your son and daughter, that, "You've got a half-brother or a half-sister." Either we have a no-contact provision, which the government trumpets, which is the protection mechanism it says it is, or we don't. But clearly, by using the wording I have, that is the legal intent.

Again, I'm surprised that members haven't looked at some superior court decisions where—the comments we make in these committees are sometimes brought in as evidence because it is the public domain. Mr. Parsons is speaking for the government. He's indicating that he interprets it that it's adequate. I was giving him a different legal opinion because then he has the opportunity to include it in the legislation to ensure the protection. I'm putting at test your statement that in fact there's adequate protection. I'm telling you that legally it is not. This current wording here, right now: It's debatable whether I could take an ad in my local newspaper and say, "Here's who I am; I'm looking for so and so," and give all the defining features save and except the name—it's still not covered under this. I'm talking about, directly or indirectly, the individual who has had their privacy rights abrogated—this is the only right that they've been given under the legislation, that they have a contact veto. The way to avoid going to court for a \$50,000 fine is to make sure you've talked to one or two other members of their immediate family. The law doesn't say that you can't contact them specifically; it says you cannot contact them indirectly.

1620

The Chair: Any further debate? If there's none, I will now put the question. Shall the amendment carry?

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry.

Mr. Jackson: I move that subsection 56.1(2) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by adding at the end, "or the adopted person's spouse, adoptive parent, child, sibling or any other member of the adopted person's family, either directly or indirectly."

The Chair: Any debate on the amendment?

Mr. Parsons: As with the previous amendment, I would just reinforce my comments.

The Chair: Any further debate? If there's none, I will put the question. Shall the amendment carry?

Interjection: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The amendment does not carry. Page 25, Mr. Parsons.

Mr. Parsons: I wish to withdraw this motion, as it is related to motion 17, which you very harshly ruled out of order.

The Chair: So that's withdrawn.

The next one is page 25a.

Mr. Jackson: Before we go past subsection 56.1(3)—we're still on section 56.1; we are at subsections (3) and (4)—I wish to discuss penalties in subsection 56.1(5). I don't want to go beyond that.

The Chair: There are two subsections prior to that.

Mr. Jackson: All right.

Page 25 is moved out of order.

I move that subsection 56.1(3) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by inserting "or a member of the birth parent's family" after "contact or attempt to contact a birth parent."

The Chair: Is there any debate on this amendment? If there is no debate, I shall put the question. Shall the motion carry?

Interjection: Recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: The motion does not carry. We are on page 25b, subsection 56.1(4).

Mr. Jackson: I move that subsection 56.1(4) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by inserting “or a member of the adopted person’s family” after “contact or attempt to contact an adopted person.”

The Chair: Any debate on the amendment? If there’s none, I shall put the question. Shall the motion carry? It’s a recorded vote.

Ayes

Arnott, Jackson.

Nays

Churley, Fonseca, Leal, Parsons, Ramal.

The Chair: That does not carry.

We have page 26, Mr. Parsons.

Mr. Parsons: I wish to withdraw page 26.

The Chair: Therefore, shall section 10—debate on section 10?

Mr. Jackson: Yes. I served notice that I wanted to revisit subsection (5), dealing with penalties. Several people wrote to us saying that \$50,000 is the maximum and that the minimum penalty by a judge could be \$500. I am concerned about this, ever since I had a very unpleasant experience with the Attorney General of this province when a judge took a parking violation for a handicapped person parking space and the judge trivialized this requirement in our law, suggesting that as long as there were other spaces available to the handicapped, he was free to take them. He took a substantial fine and reduced it to a trivial amount. I was quite incensed by that and by the government’s failure to do anything about it.

The simple instrument I have at my disposal is from now on to talk about minimum sentences any time I talk about maximum sentences. In fact, we did that with the support of the government because of the Attorney General’s failure to respond accordingly to this habit. So, given that this current government has looked at it, I would move an amendment that section 56.1(5) be amended by adding “liable to a fine of not less than \$30,000 and not more than \$50,000 for an individual, or \$250,000 for a corporation.”

Let me put it to you another way. We’ve got two legal opinions that are indicating that—

The Chair: Mr. Jackson, may I suggest that maybe, since you introduced a new motion, the staff take a few minutes to put it together. Then you can debate it when it’s back. I understand we need about 10 minutes to do this, so let’s have a 10-minute recess.

Mr. Jackson: Mr. Chairman, we should have minimum requirements for corporations, although I’ve been scanning my mind to determine how a corporation would be involved in this legislation, unless the corporation is the registrar general. Can I suggest for counsel, then, a \$30,000 minimum?

The Chair: You can certainly discuss that with the staff. You would tell them what you want, and once the motion comes back, we’ll debate that. OK? Ten minutes, please.

The committee recessed from 1630 to 1647.

The Chair: We do have the motion. Mr. Jackson has the floor. You may wish to start by reading it into the record, and we’ll go from there.

Mr. Jackson: I move that subsection 56.1(5) of the Vital Statistics Act, as set out in section 10 of the bill, be amended by striking out “to a fine of not more than \$50,000 for an individual or \$250,000 for a corporation” and substituting:

“(a) in the case of an individual, to a fine of not less than \$25,000 and not more than \$50,000; and

“(b) in the case of a corporation, to a fine of not less than \$125,000 and not more than \$250,000.”

The Chair: Is there any debate on this amendment?

Mr. Arnott: I guess my question goes initially to the government’s motion, because it indicates that there is a maximum fine for a corporation of up to \$250,000. I was curious as to under what circumstances a corporation might be in contravention of the act. I can understand how an individual might be, but I’m curious as to how a corporation might be.

Mr. Parsons: I’m trying to think quickly whether there are companies that may say, “We will find your relative for a certain number of dollars,” and pursue it.

Ms. Churley: Someone doing the search would.

Mr. Parsons: Right.

Ms. Churley: And would contact on behalf of that person, I’m assuming.

Mr. Parsons: Yes. It could be a company that guarantees, “We will get access,” when in fact they don’t have the legal right to.

Mr. Arnott: Briefly, I am in support of Mr. Jackson’s motion. Certainly in the public discussion of this issue in this bill, the figure of \$50,000 has been thrown around as reassurance that there would be a serious repercussion for anyone who ignored the non-contact veto. I wasn’t aware that it was a maximum of \$50,000. I actually thought it was the minimum. Perhaps I’m remiss and should have known that, but to learn today that it’s a maximum of \$50,000—in fact, a judge would have a great deal of latitude and perhaps the fine would be as little as \$500, perhaps setting a precedent that would influence people to think that this non-contact veto was a joke and feel that it was worth taking the risk because the fine might be as little as \$500. Obviously, that’s a concern. As my colleague has pointed out, in recent days we’ve seen the Attorney General talk about the need for minimum sentences for gun crimes because he feels that there needs to be more direction to judges to ensure that these crimes aren’t treated lightly.

I think the principle of what Mr. Jackson is proposing, to ensure that there is a very high threshold of minimum fine, is something the government would want to support.

Mr. Parsons: I think I now have a sense of the Conservative Party's plan to deal with the deficit, had they been re-elected.

We do not support a minimum fine, for a number of reasons. I can think back to when the previous government had the zero-tolerance policy for schools, and I watched developmentally handicapped individuals who committed an act that was really beyond their control being dealt with under the same cookie-cutter formula as an individual who willingly made the decision to do it.

This is a serious business to us. We certainly don't want to encourage contact, but I would like to think that we will allow the judges to be independent and have a brain. If an individual is indeed developmentally handicapped and does an action that they don't have total responsibility for, I don't think there is sense in having a \$25,000 fine. I can think perhaps of a desperate situation where someone is dying and has chosen to do an action out of desperation, and I can even think of the real possibility of a family or an individual having no money, so what point is a \$25,000 fine to a family that is indigent?

We empower our judges to determine guilt or innocence. I believe we need to, at the same time, empower them to make the decision based on the circumstances. From time to time I see decisions made by judges in the paper and I wonder why. But that says to me that every day there are hundreds or thousands of judicial decisions made that are extremely valid. We do not support a minimum fine for this particular case.

Mr. Arnott: The parliamentary assistant seems to be, with his response, underlining why a non-contact veto in many cases will be ineffective. That has been the contention of our caucus and why we've been calling for a disclosure veto, to ensure protection of both parties.

Ms. Churley: I don't support the amendment. There are some jurisdictions that don't even have contact vetoes. Studies have shown the respect that is shown between the parties when there is some contact—one party wants to initiate contact that doesn't happen. In fact, we have the advantage of looking at other jurisdictions that have no contact vetoes and don't have problems or that have contact vetoes and have very few problems.

I think the threshold is very, very high as it is. Anybody looking at that as a maximum would be aware that that indeed could be imposed upon them. But in this kind of situation, were there to be an incident, it would be incredibly important, given the sensitivities of these relationships, that the judge could have some discretion in terms of a fine, and even whether or not there should be a fine imposed, depending on the circumstances. That would take the discretion away in perhaps a very sensitive human situation.

Mr. Jackson: I'm having a hard time listening to the rationale being dropped out on the floor here. Several lawyers, and myself on at least three occasions, have raised the issue of the right of a citizen in this province not to be re-victimized. That is entrenched in our law. That means that a person who has been victimized, a woman in particular in this instance, is not required to go before any other tribunal to prove her pain and suffering. That's in our laws.

Why are minimum standards, minimum fines, so important? Because they don't go to court for that reason. To listen to Ms. Churley and the parliamentary assistant talk about, "Well, we'll trust our judges"—to do what? To listen to how much pain and suffering the individual went through and agonized over having the veto? Again I encourage you to read some of the body of analysis of how the contact veto was working in other jurisdictions. Where it is abused, it has very, very dire circumstances for families.

I can't help but think that there's a certain theme running through this legislation that can only be accounted for under two conditions: that the minister has given such specific and tight marching orders that there's absolutely no deviation whatsoever, or—and this concerns me even more—that the real intent of this legislation is not to provide even the kinds of minimal protections that we're providing. These minimal protections have been voted down with a high degree of regularity by the government members, yet the purpose of them was to provide what little protection we could for those very few people who may feel, for deeply personal reasons, that they need to trigger that portion of the legislation. Minimum fines have the effect of impacting conduct; that is everything we know about them. It's interesting to note that if you don't operate your motor vehicle properly, we have minimum fines, yet on something that can cause such irreparable harm, we're not going to consider having minimum fines.

First of all, we're not even clear on who's actually going to go out there and charge people to do this. Who actually lays the charges here, Mr. Parsons, when someone has broken this law? Who, in your mind, is actually going to police this? Does someone have to file an affidavit with the courts and say, "I've been wronged, and here are the reasons for my wrongdoing"? Are we going to make people pay a court fee to go in after their lives have been disrupted to that extent?

The Chair: Excuse me, Mr. Jackson: It is 5 o'clock. I will recommend that we continue this discussion tomorrow at 9 a.m. Please keep in mind that it's from 9 to 5 tomorrow.

I thank you all for your participation and wish a good evening to all of you, in particular to staff.

The committee adjourned at 1700.

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Ms. Marla Krakower, manager, adoptions disclosure project

Ms. Lynn MacDonald, assistant deputy minister, social policy development

Mr. Hari Viswanathan, policy analyst

Ms. Susan Yack, legal counsel,

Ministry of Community and Social Services

Clerk pro tem / Greffière par intérim

Ms. Lisa Freedman

Staff / Personnel

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Disclosure Act, 2005

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ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
SOCIAL POLICYCOMITÉ PERMANENT DE
LA POLITIQUE SOCIALE

Thursday 15 September 2005

Jeudi 15 septembre 2005

*The committee met at 0905 in committee room 1.*ADOPTION INFORMATION
DISCLOSURE ACT, 2005LOI DE 2005 SUR LA DIVULGATION DE
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 183, An Act respecting the disclosure of information and records to adopted persons and birth parents / Projet de loi 183, Loi traitant de la divulgation de renseignements et de dossiers aux personnes adoptées et à leurs pères ou mères de sang.

The Chair (Mr. Mario G. Racco): Good morning, all. I think we can start. We will continue from where we left off yesterday. Mr. Jackson had the floor when we ended the meeting yesterday and I would ask if Mr. Arnott or Mr. Sterling wishes to continue the discussion.

Mr. Ted Arnott (Waterloo-Wellington): Just to refresh the memory of the members, I would again indicate that I am very supportive of the motion that Mr. Jackson has moved. The government has talked about the idea of having a \$50,000 fine for people who break the contact veto rule and held this up as a big deterrent that is going to ensure that it won't be broken. At the same time, we know that the \$50,000 figure is a maximum fine and there's no minimum fine referenced in the bill. It's my belief that by creating a high threshold of a minimum fine you'd send a very strong signal to people that this is a serious business, and if there is a contact veto in place you don't break it, and if you do, you're going to be paying \$25,000 as a fine at a minimum and up to \$50,000. So I would again ask the government members to consider what we're trying to say on this and, hopefully, support the motion.

Mr. Norman W. Sterling (Lanark-Carleton): I just have a question of the staff. Your minister has referred very often to New South Wales in Australia, where they have this particular block. How many prosecutions have taken place in New South Wales?

Mr. Hari Viswanathan: Good morning. My name is Hari Viswanathan. I'm a senior policy analyst with the project.

According to the information that we received from the family service office in New South Wales, there have been no prosecutions.

Mr. Sterling: You see? That shows what a farce this whole thing is. The truth of the matter is we're arguing

over peanuts here, because there will be no prosecutions. What mother wants to prosecute her natural child because there has been a breach of some kind of non-disclosure thing here? I mean, this is a joke. This whole non-disclosure fallacy that this is some kind of protection for the natural mother or the adoptee is a complete joke.

Here's your minister out there saying that the New South Wales legislation is working, and nobody has had a prosecution. So we have no idea how that legislation is working. All of the people who have been hurt by this kind of legislation are not coming forward.

I support the motion, but this whole section about disclosure is a joke, and it's a shame that the minister has hidden behind this phony protection for either adoptees or natural mothers.

The Chair: Any further debate?

Mr. Ernie Parsons (Prince Edward-Hastings): That was an interesting question, and I guess the follow-up to it is, if I could: There have been no prosecutions, but have there been issues? Has the law been broken? Has that created problems that would cause a need for prosecution?

Mr. Viswanathan: There have apparently been four anecdotal stories of violations, but they were not considered to be serious violations.

I don't know the specifics or the details of the violations. However, in terms of official violations of the no-contact notice as it's written in their law in New South Wales, there haven't been any violations.

Mr. Parsons: So these, I assume then, are four incidents where two parties somehow came together, with one of them apparently not wanting that to have happened.

Mr. Viswanathan: Staff mentioned that they had heard there had been a violation. However, nothing had ever been reported to them, officially.

Mr. Parsons: But is it fair to say that that's happening every day right now, whether in New South Wales or Ontario or the United States or anywhere? Right now there are people seeking out the other one and getting together, perhaps where one didn't want to, without this legislation.

Mr. Viswanathan: There are currently no controls on people in Ontario contacting each other, because, as you're aware, there is no no-contact notice currently in place. So yes, I can probably say that there are definitely

people doing that at the moment in Ontario: contacting each other without a no-contact notice provision in law.

Mr. Parsons: Perhaps you don't have the information, but if we look back historically, are we aware of any instances in Ontario ever where the two parties contacted each other and there were problems of safety or there were—I can't recall ever seeing in the media or on the periphery of social work being aware of it having caused a problem where someone has shown up without. Any awareness of that?

Mr. Viswanathan: I can't actually speak to that issue particularly, because that question has never specifically been asked. I can't speculate. However, from the research that we have done, we haven't come across any, no.

Mr. Parsons: It's certainly my opinion that the no-contact proposal in this bill will improve the present totally unregulated environment that allows anyone to contact anyone.

Mr. Sterling: Of course, that provision doesn't cover the adoptee from contacting children of the natural mother, the husband of the natural mother. It doesn't cover other relatives, it doesn't cover friends, neighbours or anybody else.

The problem with releasing the information is, once it gets into the hands of either one, they are in control of that information. Privacy is about controlling your own information. So what we are doing is taking away the privacy right of either one of the two, and saying, "We, the state, promised you privacy and now we're breaking our word," which is not unusual for this government, quite frankly, in terms of saying, "We told you something before and now we're going to tell you something in the future that's different." But notwithstanding that, I'm going to ask the researcher, have you done any research in this area in terms of the statements you're making? You're making statements here saying nothing's happened, but have you done research? Have you tried to dig out where unhappy reunions have taken place in the province? Have you done any research in New South Wales in this regard? Have you got any specific instances about these contacts that have taken place? Have you?

0910

Mr. Viswanathan: I'm not able to answer that question with respect to Ontario. However, as I stated earlier, with respect to New South Wales, there were those four anecdotal examples that were provided to me. In terms of an official violation of a no-contact notice in New South Wales, there was nothing that happened there that—

Mr. Sterling: Do you have the names of the parties in New South Wales where these unhappy contacts were made?

Mr. Viswanathan: The names of the parties involved in that?

Mr. Sterling: Yes.

Mr. Viswanathan: No. These were anecdotal examples. For example, I spoke to one of the staff at the family service office in New South Wales. She indicated that she had heard there had been an encounter between a birth parent and an adoptee, not necessarily on purpose

but by accident, and there had been a no-contact notice in place. However, there was no official record of any sort of particular incident being reported or a request that there be a fine levied in a particular—

Mr. Sterling: OK. Will you give us the details of the person or persons you talked to with regard to these four anecdotal cases in New South Wales? I'd like to talk to those people too about this particular issue. Will you provide that to me in the next week?

Mr. Viswanathan: Certainly.

Mr. Sterling: Thank you very much.

The Chair: You may want to provide it to all three parties.

Any further debate on this?

Mr. Parsons: Just one more comment. I know where you're coming from. I was with you for a long time and I appreciate your sincerity and I appreciate your concerns, because I struggled with this one myself.

If a government were introducing a law that said that everyone from Lanark can't get their birth certificate, or everyone who is blue-eyed can't get information on themselves, we would say it's fundamentally wrong, yet in this province the practice has been that everyone who was not raised with their birth parents can't get their birth certificate. That's the struggle: the rights of one versus the rights of the other.

I appreciate that you couldn't be here yesterday. I'm going to be repetitive, I think, with what I stated yesterday. We have a group of individuals in this province who, under the current practice of all governments, cannot find out information about themselves. If it is important for a person to have the right to protect their information—and I buy what you're saying. There can't be two winners in this. That's the problem. If they have the right to protect the information and everything you're saying is right, then surely the other group should have the right to get their information. That's been my struggle. Which one is more important than the other? That's almost impossible to answer.

Then it struck me that right now, without the legislation, everything we worried about is happening. I was president of a local adoptive parents' association for a time and we met with adoptees who came in and invariably talked about how they went about researching and finding their birth parents. It was easy 20 years ago; the Internet has made it easier. So if we were to walk out of this room and abandon this bill, every birth parent out there who is genuinely concerned and believes there would be problems if their child showed up would still have that same fear. It may not be in the media, but it's still there, except it's unregulated. But there is a higher possibility of their birth child showing up at the door with no legislation than there is with this legislation, because they do it every day.

I'm sure there have been instances in Ontario where appearing at the door has created problems. People are people. But this increases the possibility that the adoptee is aware of the process. It says, "There is a document filed where they don't want to contact me." Norm, you

work with people as much as I do, and most people are good people. Most people, I believe, will honour that. I really believe that. For the ones who won't honour it, if there are any, it doesn't matter what rules exist; it doesn't matter what we put in place. This establishes some order to it, and for that reason, I'm supporting it, because right now it's just wide open.

Mr. Sterling: I can't accept the premise that it's wide open now. If it's wide open now, why do you have the legislation? If the intent of your legislation is to open the records, it doesn't matter whether you open them or you don't open them. In other words, you're saying that by passing this legislation, you're not going to give any access to information or information that can be utilized by either party to contact the others. I mean, that position is very hard to understand.

Mr. Parsons: I understand your sincerity on the issue, and you have a lot of knowledge on this issue because of your background, but the issue for me is one of credibility of us lawmakers and our system and our institution, where we have told people in the past that these records are private. We've told them over and over again that they are private. Now we're breaking our word.

Why should people believe that if they follow the law, they will be protected in the future? I mean, the whole basis of our institution and our legal system is that we, the government, say to the citizens, "If you follow these rules, you will be protected in the future." We will make promises to you about this, promises to you about that. We now have a new health privacy act. How would you feel if the next government or the government thereafter changed the rules all of a sudden with regard to the privacy of our medical records? I don't think we'd like that. So the whole notion that we, as legislators, have the right now to say, "Well, you know, we told you this, but we lied to you"—that's essentially what we're saying. We're saying, "The government basically lied to you before," that they were going to protect their records.

Now, the other part of this and the other notion of this is that I am for more disclosure. I am for more health information passing. But that has been achieved in BC, Alberta and Newfoundland with their legislation in allowing a simple, selective, elective veto by either party, and we know that only 5% of those people have taken it up.

So we're into the general debate here, but I guess my revulsion at this whole no-contact issue—and it was just proved by your ministry staff that it doesn't work in New South Wales, because there hasn't been one prosecution in that state under this act—is that you're not providing any protection at all for either party, and you're pretending to. You're selling this out on the street. Your minister has stated it in news articles and news stories, and it's not true. You're not providing any protection, and that's my revulsion with this particular section of the legislation.

The Chair: Of course, the discussion is on the entire section 10. Ms. Churley, you wanted to participate in the discussion?

Ms. Marilyn Churley (Toronto–Danforth): Yes, I do. I just wanted, because Mr. Sterling wasn't here yes-

terday, unfortunately—of course, he's heard these arguments before—to respond to some of the things he said.

You know, if you want to throw around legalities, I want you to understand that you're talking not only to a birth mother who went through the process, but also as you, Mr. Sterling, a former Registrar General and very familiar with these issues. Adoption procedures would never promise confidentiality to birth parents, and that's reflected by the absence of reference to confidentiality in the forms that I and other birth mothers signed. That is the reality of the situation.

0920

We went through this yesterday, Mr. Sterling. Some birth mothers were told that by certain social workers. There's no legality to it but, yes, they would have been told that; and some of us were told different things. If you want to say that some people were promised by a social worker and believed that social worker, yes, but in terms of legalities there was never any legal promise that there was confidentiality. It is not reflected anywhere in any documents. On the contrary, the privacy commissioner recently released—I read it into the record yesterday, and I will again. Here it is. I've made this point over and over again, that the issue here besides being a human rights issue and people having the right to know who they are—this is not opening up documents to the entire public; it's between a birth mother, birth parents and the adult adoptee. That is it.

Furthermore, it's been a patchwork quilt of procedures, which you are well aware of. There's such a thing as non-identifying information, which is what helped me find my son. The fact is, my son had my surname in his adoption record and always knew the name. The privacy commissioner was not aware of this, as most people aren't when they talk about the promise of confidentiality, that there never was one.

Furthermore, as the privacy commissioner found out through us actually—I'm putting it on the record—in fact these surnames were placed on the adoption orders. Many, many people, particularly the older people you talk about, I would submit, if their children had wanted to find them, they would have by now.

She put out a great, big alert for birth parents:

"Adoption Identification Alert"

"Until recently we believed, on the basis of information that we then had, that outside of the adoption disclosure registry scheme, it was extremely difficult for an individual to obtain identifying information from the registrar of adoption information other than for health, safety and welfare reasons. We are now aware that potentially identifying information from adoption orders is made available to adult adoptees on a routine basis.

"An adoption order contains the information set out in a designated form, and includes such information as the child's date of birth, place of birth ..., the name of the judge and the address of the court issuing the adoption order, and often the full name of the child before adoption. The child's surname before adoption will likely be (although not always) the same as that of the birth mother

or father. This, together with the other information, can be used as a springboard for identifying the birth parent."

She's put out an alert now, retroactively, admitting really that there's never been confidentiality. There are all kinds of ways that thousands of people have been finding each other through this, through knowing the name. And I will tell you why, then, we need this legislation and why we do not want a disclosure veto. There are some people who cannot find each other. We have women in their seventies and eighties desperate to know before they die because, for whatever reasons, through the information that's out there they can't locate each other. It is a human rights issue. If you're going to open up adoption records for a few, why continue to discriminate against a few others?

Let me end by saying this: that retroactive legislation is permitted in many jurisdictions when it is remedial in nature, when it is correcting a wrong, when there's a human rights violation, which is the issue here. What we are doing is not unheard of. It's been done in some aboriginal cases and it's been done in other cases where it's very clear that there have been human rights violations in the law, and what you do to correct wrongs to people is fix that legislation retroactively.

This is about human rights and making sure that people have the right, once they become adults, to their own personal information, which we all take for granted, let alone whether or not people can get it.

I would say that if 99.9% of people, by spending money, were able to access information that is rightfully theirs anyway, as most people are having to do now—they're hiring people; they're going over the Internet; they're doing whatever they can to find each other. But it's still a human right, and they still should have access to their own information.

The bottom line as well is that there are some people who can't afford to hire a private detective or a firm that does this kind of work to do the searches for them, or their situation was such that there are periods of time within the patchwork of the processes where there were numbers attached—can you believe it?—to a few for a couple of years instead of identifying names. That is why we need this legislation.

England opened up its legislation, for heaven's sake, in the 1970s. Jurisdictions, scores of them across the world, have done this, Norm, without these dire consequences that you're putting on the table. Read the research. Look at what happened in England, Scotland and Wales. Australia had a disclosure veto as well as a contact veto, and they've just now decided to take the disclosure veto off because they don't need it. The research is there. It's been done in Scotland since the 1930s, I believe. We are only doing what other jurisdictions have done and are way ahead of us. Some jurisdictions don't even have contact vetoes and it's working.

That's the reason this legislation is necessary and it's why I have been fighting, with thousands and thousands in the adoption community at all three levels—adoptive parents, adoptees and birth parents; this is why we've

been fighting for years and years to open up these records to the individuals who own the records, not to anybody else.

Mr. Sterling: I must respond, of course, and I don't speak only as a former registrar; I speak as a former Attorney General, understanding what legal obligations are. Legal obligations are not only incurred in statute and regulation but in contract, in policy and in a lot of other ways by the government of Ontario, as represented by their employees or transfer agents etc.

We can have an argument about the legality of a promise or not a promise. I think that is, quite frankly, not germane to the situation—

Interjection.

Mr. Sterling: Well, there is a legal promise; there's no question of that in my own mind. Why is there a sealed record?

Notwithstanding that, we are not representing the majority. We understand that the majority wants open disclosure, and we're for that. We understand that all want disclosure of health information.

We are fighting for the minority, the small number of individuals who are going to be substantially hurt by the disclosure, people who are going to be contacted and injured, either in an emotional or some other way. We have said before as governments, "You can rely on us. We're going to seal these records in an envelope and you can rely on us. Give up your baby for adoption. Act in a certain way with regard to your future actions."

We are fighting for that minority, those small numbers of people who feel that this is a tremendous invasion of their privacy, be it an adoptee—I heard from one yesterday, not in my riding but down around Stratford, who said to me, "I have no specific reason for disallowing the disclosure of my record, but I want to make that decision myself. As an adoptee, I am happy in my particular situation and think that opening the records will do nothing to enhance myself or my natural parents." So she just wants that particular choice of her own volition. She doesn't want the government to break the word that she thinks they gave to her natural mother.

We are fighting for a minority of people here who could suffer grievous damage by the disclosure of this information. I want to make that very, very clear, that our party and I would wholeheartedly agree with the BC and the Alberta legislation, which has been very successful. Only 5%, the minority that we're representing, have stood up and said, "I want to protect the information, as promised."

0930

Mr. Parsons: I wish I had a better way with words than I do, because I've struggled with this one. I'm starting to find the right words. I'm going to try to describe the path that I went down to get to where I am now. I find this one of the more emotional bills this Legislature has dealt with in my time because of the impact I know it's going to have on individuals in the province. I know we all share that.

When we adopted our first child—after six months one goes to court and the adoption probation has ended

and they become legally your child—we were quite frankly very surprised at the time when they gave us a page out of a birth registry for the hospital. The names were changed so that it appeared that my wife, Linda, and I were the birth parents. We didn't see that coming. We were quite amazed by that. I'll admit our first reaction was, "This is kind of neat. This really, really makes our daughter our daughter because we're on the birth registry at the hospital." But I drove home and I thought, that's kind of fraudulent. It looked like my wife gave birth to our daughter—and she's our daughter—but that intrigued me. I thought, why are we doing this, why is this being done? But we were told to fill out the form and, were someone to go to the hospital, it appeared that Linda and I had had a baby daughter on that day.

Even at that stage, that didn't seem right. It just didn't seem right to us because, I thought, this is almost geared as if we're supposed to not tell anybody she's adopted. We're supposed to pretend that we gave birth, and that wasn't right either. We made no secret of how lucky we were. We had the privilege a lot of parents don't: We got to pick our children, and we picked some pretty good ones. So that was wrong right there. It was legal, but morally it wasn't quite right.

I'm not a great researcher, but I have been unable to find any evidence that any government, whether it be Liberal, Conservative or New Democratic Party, had legislation or regulation that said that birth mothers were entitled to protection of their name. I can't find anything that said that that promise could be made or was an option or must be made or whatever.

Adoption has changed in children's aid societies. I saw a marked difference in the 25 years that I was there. Do I believe that some birth mothers were promised that their names would never be disclosed? I absolutely believe that happened—no doubt in my mind that that happened. But in the children's aid society that I was proud to be a member of, there was never any policy. There was never anything on paper saying that that promise could be made.

It doesn't matter whether it's children's aid or any other organization, whether it be public or private, the employees are trying to do what they believe is in the best interest, and sometimes they say the right words that will bring comfort to a person but not having any legal authority to say that. And I don't believe there was ever legal authority to say that.

Suppose there was—and I'm quite convinced there wasn't—legal authority to promise that birth mother that her information would never be disclosed. That means that that birth mother has had the right to trade away the rights of her child, because if you accept the one, that the birth mother has the right to privacy, then you have to accept at the same time that the child has lost their rights to their information. I don't believe anyone, whether it be a parent or a next-door neighbour or a stranger, has the right to trade away my rights or another person's rights. If it were law, I would still have to say, no, that other person has full rights, the same as every other person in

Ontario. Whether they're adopted or not adopted, they retain the right to know about themselves.

When I factor in that there wasn't any legal basis for the promise, then it just becomes that much clearer to me that the adoptees must not be treated as second-class citizens. If we accept, as some jurisdictions have, "The new rules start today, so everyone who is part of an adoption process from now on has to agree to full disclosure," then we've got two tiers: Those adopted before 2005 have no rights; those adopted after, do. That's not acceptable to me personally, to our government or to the people of Ontario.

I think, Mr. Sterling, as an engineer you share my love. I love the fact that two plus two is four. It's not nearly four, it's not 3.999; it's four. I wish everything in our lives was nice and simple and clear: "Here it is. We've done this," and there are no other problems. But it isn't. So I have chosen, and I'm proud that our government has chosen, to say that we will not have second-class people in Ontario who cannot access information about themselves, and that's all they want—about themselves. We're opening the door to let them into a room where they already live; they just haven't been allowed into that room. I believe this bill accomplishes that.

I will reiterate that at the present moment there is absolutely nothing to prevent that child showing up at the door, because they don't get any support out of the government. They don't get any information. They have to do it by word of mouth; they have to do it by groups that meet informally; they have to do it by word on the street; they have to do it by people who say, "For X dollars, I will find your birth mother." That's not right. Some people don't have X dollars, but they're still entitled to that information. This provides an equality and a fairness to it that is far better than this present system.

Mr. Sterling: I just have one question, Mr. Parsons. Why do we have disclosure legislation now? Thousands and thousands of people have gone through the disclosure process that we do have now in the government and have had for some period of time. There is a piece of legislation. Why do we have sealed records if there is no legal obligation to keep this record private? There is a legal obligation on the government to keep this record private. If there wasn't, your minister could say to your bureaucrats, "Release the records." End of story. We wouldn't need this legislation; we wouldn't have this debate. There is a legal obligation on the government to keep its word that we have promised these people.

Some people are going to be hurt. We'll never hear from them, because they will be in the background. The research that's been done in New South Wales doesn't try to dig out those people. They go to the happy people: 95% of the people will be happy; 5% will not be happy. The whole notion that there isn't going to be a lot of harm on a minority of these people is a fallacy. Why wouldn't you want to protect them? Why wouldn't you want to do what BC, Alberta and Newfoundland have done? You can get away from a lot of this gobbledygook in this legislation, which is a dog's breakfast in terms of a

piece of legislation, because you've been changing your policy as we've gone through this. Why wouldn't you go back to a simple test and just say to the person, "Do you want to block or don't you want to block?" and then come back in 10 years if 50% of the people block. But if only 3%, 4% or 5% block, you've probably achieved your goal and protected the minority. I don't understand your philosophy and your abandonment of your promise. It's so important for our institution, for Parliament, for the government to be able to say to people, "Follow the law, follow the rules, and you will be OK. You're a good citizen." What we're doing here—uh-uh.

0940

The Chair: Any further debate? If there is none, I will now put the question. It will be a recorded vote. We are voting on 26a, which is the latest amendment that Mr. Jackson put yesterday.

Ayes

Arnott, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: This amendment does not carry.

What's left is to deal with section 10. Shall section 10 carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The section carries.

Now we go back to what we stood down yesterday: section 9.1, page 24. We had the motion on the floor; we just stood it down. It's a government motion. Is there any further debate on that motion introduced yesterday?

Mr. Arnott: I'm sorry, Mr. Chair. Which one is that?

The Chair: It's page 24, section 48.6, on section 9.1 of the bill.

Mr. Arnott: I move that section 48.6 of the Vital Statistics Act, as set out in government motion 24, be amended by striking out "The Lieutenant Governor in Council shall ensure that a review" and substituting "The assembly shall ensure that a public review".

The Chair: That's an amendment to the amendment. Any debate?

Mr. Arnott: This follows on the discussion that we had yesterday and the statements that Mr. Jackson and I made. There needs to be a public review process after five years, not a private administrative review that doesn't involve any public input and that may very well lack accountability and certainly will lack transparency.

So we've suggested that a committee of the Legislature should be charged with the responsibility of doing the public review after five years and that a report be made to the Legislative Assembly after the review is completed.

Mr. Sterling: The section, as it stands, only means that the cabinet of Ontario decides how a review is going to take place. It doesn't say that it's going to be in the open. It could be that somebody writes a report—that's the review, slam dunk, done—and nobody in the public has any participation in it. So I support very strongly this amendment.

The Chair: Is there any further debate on this amendment?

Mr. Parsons: Certainly, the intention of the original amendment, which has now been amended, was that this is a review intended to determine the operational difficulties. This is a fairly complex change. We're shifting responsibility from one ministry to another, from one area to another, establishing a new group. The Legislature can at any time undertake a review of anything. It doesn't need this amendment to make that happen. This is dealing with the mechanical issues. If there are philosophical problems with the change in legislation, the Legislature is perfectly free to undertake a review.

I will not be supporting the amendment. The amendment introduced by our government is to do an operational review, not a philosophical review.

Mr. Sterling: So there's no intention of asking people after five years whether this thing has worked or failed or injured people, this minority group that I'm talking about. There's no intention of asking them whether or not we should have done this or shouldn't have done this. Is that correct?

Mr. Parsons: You've been in public life for some time. You don't need to ask people if there's a problem; they will come forward with it. If very clearly there are problems identified that are beyond the operational, I have no doubt in my mind that it would be reviewed and acted upon.

Mr. Sterling: We have had in legislation before the requirement that the Legislative Assembly review a piece of legislation after a given period of time in order to ensure that it's working or not working and if there are ways to improve it. When we're taking such a radical departure from the existing state of matters, do you not think that it would be most prudent to have such a clause?

You say that the Legislative Assembly can do what it wants, but it only does what the majority wants, the governing body of the day. The legislators in the opposition don't get the choice of having that, and that's where the people who might object to this legislation go to. They go to the opposition and say to the opposition: "This is not working. Can you do something about it?" Unless it's in this legislation, it won't happen.

The Chair: Is there any further debate? If there is none, I will put the question. We are dealing with the amendment to the amendment. Shall the amendment to the amendment carry?

Ayes

Arnott, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment to the amendment does not carry, so we go back to the original amendment. Is there any further debate on that amendment? If there's none, I will put the question. Shall the amendment carry? Those in favour?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: None opposed. The amendment carries.

We are going to move to page 27, Mr. Parsons.

Mr. Parsons: Motion number 27: I move that subsection 11(2) of the bill be struck out and the following substituted:

“(2) Section 60 of the act is amended by adding the following clauses:

“(r) prescribing persons for the purposes of the definition of ‘birth parent’ in section 1;

“(r.1) governing the matters provided for by sections 48.4 to 48.4.3, including a determination of whether an adopted person is incapable;

“(r.2) governing what constitutes abuse for the purposes of section 48.4.4, governing the criteria and information to be used to determine whether an adopted person was a victim of abuse by a birth parent and governing the manner in which the determination is made.”

The Chair: Is there any debate on the amendment?

Mr. Sterling: Could somebody explain what this change is about?

The Chair: Mr. Parsons, would you mind?

Mr. Parsons: This amendment deals with a number of issues. One is that it will provide a definition of who a birth parent is. As technology changes, there is a possibility that the definition of “birth parent” will have to change with it. There needs to be a definition or mechanism to determine if an adopted person is incapable. Lastly, we need to determine the process for a prohibiting order where there has been a history of abuse.

Mr. Arnott: Did this amendment arise from the public hearings? Where did it come from? From the response of interested people?

Ms. Marla Krakower: Because it deals with an adopted person who was a victim of abuse, the last, (r.2), did. The earlier one, (r.1), was, I believe, in the bill already, so there was already a section like this. The amendment is really dealing more with adding (r.2), which is dealing with that particular amendment, which already carried at committee and has to do with an automatic prohibition being put on in terms of a birth parent

receiving information when he or she was involved in abusing the adoptee.

0950

The Chair: Any further debate?

Mr. Sterling: Just a question. In terms of (r.2), the child may or may not know by the time they reach the age of 18 or 19 whether or not they've been abused by the birth parents. Who would kick in the process to prevent the disclosure to the abusive parent?

Ms. Krakower: Whenever a birth parent applies to the ORG for the identifying information, automatically that person will have to wait until the children's aid society has an opportunity to check into the files to determine whether there was abuse involved. That birth parent would not be able to access the identifying information until it could be determined that he or she was not involved in abusing the adoptee.

Mr. Sterling: Who does the inquiry? Is it the adoptive parent?

Ms. Krakower: What will happen is that when the birth parent goes forward to the Office of the Registrar General, the ORG will then ask the custodian of adoption information to do a check to see from which children's aid society the person was adopted; or in the case of a private adoption, this wouldn't apply. That information would be conveyed back to the ORG and the birth parent would be permitted to access the information. If the person was adopted from a children's aid society, the custodian would then ask the CAS that was involved to do a check through their files and determine, based on what was documented in the file, whether there has been abuse. That information will be conveyed back to the custodian, who will then inform the ORG to either go ahead and release the information because there was no abuse, or not, in instances where there has been abuse.

Mr. Sterling: Is there any certainty to it at all? I had another constituent, not from the area that I represent but from another area, talk to me about the fact that they had adopted a child where the parents had been criminally charged and found guilty of abuse. Is there an absolute block on those parents getting those records, ad infinitum?

Ms. Krakower: What is available to a birth parent if he or she is prohibited from accessing the information because there is a finding of abuse, and if that person feels that it's unfair and that they were not involved in abuse, is that the birth parent will have an opportunity to appeal to the Child and Family Services Review Board to indicate that he or she feels that that finding is not correct.

Mr. Sterling: So even if they were charged criminally and found guilty in our courts of abuse, they still could possibly get the record.

Ms. Krakower: I'm just indicating that they have an opportunity to appeal a finding. Likely, if there's a criminal finding of abuse, my assumption would be that even if they did appeal to the CFSRB, the CFSRB would uphold the findings of the CAS, particularly in a case where, as you mentioned, it's something that was a

criminal finding and it's clearly documented. I think that's an instance where that would be upheld.

Mr. Sterling: Well, I don't think it's good enough. I think there should be an absolute block, if there was a criminal prosecution, and that we shouldn't leave it up to a board to make that decision. I think that then the child should have the option.

The Chair: Any further questions or debate? If there is none, we'll put the question. Shall the amendment carry? Those in favour?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The amendment carries.

Page 28. Mr. Parsons?

Mr. Parsons: I move that subsections 60(2) and (3) of the Vital Statistics Act, as set out in subsection 11(4) of the bill, be amended,

(a) by striking out "clause (1)(r)" wherever it appears and substituting in each case "clause (1)(r.1)"; and

(b) by striking out "section 48.4" wherever it appears and substituting in each case "section 48.4 or 48.4.3."

The Chair: Any questions?

Mr. Parsons: It's a technical amendment that reflects the new numbering for some of the earlier amendments.

The Chair: If there are no questions, I will ask, shall the motion carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment carries.

Shall section 11, as amended, carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The section carries.

Shall sections 12 and 13 carry? Any debate? If not, I'll take a vote.

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Both sections 12 and 13 carry.

Section 14, page 29. Ms. Churley, please.

Ms. Churley: I move that section 162.1 of the Child and Family Services Act, as set out in section 14 of the bill, be amended by adding the following subsection after subsection 162.1(2):

"Training, etc.

"(3) A person who is designated under subsection (1) must satisfy such criteria as may be prescribed, including criteria relating to the person's training and experience."

The purpose of this is to ensure that search agencies meet regulated standards so that they're not price gouging or mishandling private information and that they have the expertise to do the job. The government has a similar amendment that follows this one, but as I understand, yours includes the possibility that the government will assign a designated agency to handle searches on the government's behalf. Of course, I maintain that we have the ADR, and why create a new infrastructure when one already exists? But if that is the direction we're going, where it's essentially privatized, then we have to ensure that these agencies meet very, very tough regulated standards, and there's no guarantee of that within the existing legislation.

The Chair: Any questions or debate? If there are none, I will put the question. Shall the amendment carry?

Ayes

Churley.

Nays

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment does not carry.

Page 30. Mr. Parsons.

1000

Mr. Parsons: I move that section 162.1 of the Child and Family Services Act, as set out in section 14 of the bill, be amended by adding the following subsections after subsection 162.1(2):

"Same, disclosure of information

"(3) A designated custodian may exercise such other powers and shall perform such other duties as may be prescribed for a purpose relating to the disclosure of information that relates to adoptions, including performing searches upon request for such persons, and in such circumstances, as may be prescribed.

"Same, Vital Statistics Act, s. 48.4.4

"(4) One or more designated custodians who are specified by regulation may exercise such powers and shall perform such duties under section 48.4.4 of the Vital Statistics Act as may be prescribed in such circumstances as may be prescribed.

"Agreements

"(5) The minister may enter into agreements with designated custodians concerning their powers and duties under this section and the agreements may provide for payments to be made to the designated custodians."

The Chair: Any questions or debate on the amendment? If there are none, then I'll put the question. Oh, sorry. Mr. Arnott.

Mr. Arnott: Could we have an explanation for the amendment?

The Chair: Of course. Mr. Parsons.

Mr. Parsons: This amendment provides for the circumstances to be accommodated where we believe searches need to be undertaken. If we have individuals who are adopted in this province where there's a serious health issue—although it is not possible for a search to be undertaken for each and every one, where there is a vital health matter, this will allow the custodian to undertake a search to find that other individual and make them aware.

There may be cases, perhaps, where a birth parent's family has Huntington's disease in it, for example, and it would be in the best interest of the adoptee to be aware of their medical background. So although there may not be an urgent matter such as a need for a transplant, there may be a need to make them aware that they may want to consider testing to see if they in fact are going to suffer from that. This amendment allows them to undertake the search where necessary.

This is also complementary to protecting adult adoptees who were abused by their birth parents; that's one of the reasons for the amendment before us.

I wish I had the memory that I used to have, but I believe that's it. I used to criticize my father for his short memory, and I understand totally now.

Mr. Sterling: It pays to remember that.

Mr. Parsons: That's the rationale for the amendment.

The Chair: Thank you. Any more questions, Mr. Arnott? Any further debate on the amendment? If none, I shall put the question. Shall the amendment carry?

Ayes

Arnott, Churley, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment carries.

Page 31. Ms. Churley.

Ms. Churley: I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.3:

"Duty to maintain records

"162.3.1 Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain their adoption-related records for at least 100 years after the placement of the adopted person."

This amendment deals with the fact that currently there is no legislative provision that requires adoption files to be maintained for a reasonable number of years, thus allowing adult adoptees and birth parents to gain access to the files or information contained within them, information that would be critical for effective searching.

Of course, it also provides a mechanism to collect, on an ongoing basis, critical information about the birth

family's medical and genetic history that can be passed on to an adoptee. This is actually dealing with the fact that there is no provision for that. It's absolutely critical, especially with the dismantling of the existing system, which, as you know, I really object to, but my amendment failed on that. However, I think this is really critical, that there is something in legislation that clarifies that those records have to be kept by a custodian or whoever else is dealing with the adoption process.

Mr. Arnott: Right now, as far as you know, there is no requirement on the part of children's aid societies to keep records indefinitely.

Ms. Churley: No, as far as I know. The staff may respond to this. Certainly, they have been keeping the records, but now with the change of the system and the dismantling of part of the existing system, we need to really be sure, because we're not quite sure how regulations still have to be met. You talk about custodians. There's a whole bunch of changes that's going to happen. We need to be assured that whoever is carrying on with some of the work will be safeguarding those records. Can you respond?

Mr. Parsons: The Child and Family Services Act now requires that the records be kept permanently, which is interpreted to be forever. This would actually limit it to 100 years.

Ms. Churley: You could amend it if you like.

Mr. Parsons: I think I'll amend by voting against it.

Ms. Churley: But what will happen if this amendment isn't passed? With the changes in the legislation, there will be no guarantee any more that records—

Mr. Parsons: Children's aid societies will continue to keep their files on the adoptions. They're required to keep them forever. There are private adoption services in this province, and they are required to keep them forever, and if they cease business, as they do from time to time, they're required to transfer them to the ministry, and they are then kept.

Given the reality of people and circumstances, and genealogy searches, we're comfortable with the "forever" rather than "100 years."

Ms. Churley: I'm not just talking about children's aid here. It says: "Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain" those records. The concern is that, because the adoption agency is going to be dismantled and they, of course, keep records as well, we have no guarantee that anybody else who takes over that service is going to be keeping records. That's what this is all about, not the children's aid society.

Mr. Parsons: We can require children's aid societies, when you require a ministry to keep records.

Ms. Churley: Yes, and that's fine.

Mr. Parsons: But for licensees, the reality is it's impossible to order them to keep them for—

Ms. Churley: No, it's not. If we make the law such that whoever is doing the work on behalf of the government is required to keep—because you are going to stop

conducting searches. That's one of the issues that we as well as the Conservatives talked about, and I had an amendment. It's a serious problem in this piece of legislation that the so-called non-identifying information, the kind of information that is actually conducted now and held—not the CAS records, not the ones locked away, but the records that are kept by the adoption disclosure register, the ADR—is going to be dismantled. That's what I'm talking about.

You're talking vaguely about a custodian. That has to be worked out, and I had an amendment too. Whoever's going to be conducting those searches that that agency of the government conducts is going to be gone. So there's going to be some other body doing those on behalf of the government or privately or whatever, charging a fee. I wanted them to be regulated. That was voted down. But we need to have some assurance, now that the government won't be doing it any more, that they will be obliged to be regulated in such a way that they keep records. Otherwise, we're going to have quite a mess on our hands.

Mr. Parsons: Private adoptions take place now. Some are done through lawyers. Mr. Sterling would know better, but I suspect there's a requirement that their records be maintained if they go out of business. I don't know for sure.

There are also individuals. I know of a number of former children's aid society workers who now do private adoptions. You can go and have a home study done. You can adopt through them. They're not going to keep their records for 100 years right now. When they go out of business or when they die or when they leave the country, this would require them to keep them for 100 years. It just ain't going to happen.

The current legislation says that if they go out of business they must transfer their files to the ministry. We're comfortable with that. We want them to transfer it.

1010

Mr. Sterling: I have some sympathy with the intent of the amendment. I'm not sure that the amendment reaches the goal. How would you know who all the retainers of the records are? Perhaps we could ask some of the staff what happens now when there is a private adoption. Let's say a lawyer does a private adoption: What are the registration requirements now, and are they going to change under this legislation?

Ms. Lynn MacDonald: I think this is a multi-part question, if I may, Mr. Sterling.

Section 71 of the CFSA would still apply in requiring children's aid societies to retain records permanently. The CFSA also requires licensees conducting private adoptions to retain records permanently or transfer those records to the ministry.

Government schedules—I'm not going to use the proper technical jargon here—under the Archives Act require us to keep our records for a minimum of 100 years already. In the case of the custodian, which is intended to be either a government agency or part of a

ministry, they would be governed by the archival records schedules as well.

I'm hoping my legal counsel won't have to correct me on that.

Ms. Kathleen O. Wynne (Don Valley West): Could I ask for a 10-minute recess, please.

Ms. Churley: Yes. I think you'll want to look into this. Can I tell you why I put this amendment forward? I'm happy to have the recess to look into it. This was brought forward by those in the adoption community who have looked at this bill very carefully. They flagged this to be a very serious concern, in their view. I think it would be most appropriate to look into it a little further.

We can hold it down, if you like.

The Chair: Is there consent for a 10-minute recess? I think staff may also need a few minutes. There is.

The committee recessed from 1015 to 1025.

The Chair: Ms. Churley, the floor is yours, please.

Ms. Churley: After some deliberation over the recess, I would ask that we stand this down until this afternoon.

The Chair: Is there consent for standing down? There is, so this item is stood down.

We'll go to the next one, page 32. Mr. Sterling or Mr. Arnott?

Mr. Arnott: I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.4:

"Counselling

"162.5 The minister shall ensure that counselling is made available to adopted persons and birth parents who may receive information that relates to an adoption or are concerned that they may be affected by the disclosure of such information and who cannot otherwise afford counselling."

Mr. Sterling: This amendment is put there sort of following on our present disclosure procedure whereby counselling, as I understand it, is provided to willing people who are trying to reconnect, to make that reconnection as successful as possible. This would not only cover that situation, but it would also allow someone who was perhaps fearful of a contact to seek counselling if they couldn't afford that counselling. For instance, if the woman who had written to the privacy commissioner who had been raped some 40 years ago wanted to receive counselling because she feared very much the contact by the adoptee if the record was open she would be able to receive some counselling if she couldn't afford that kind of counselling.

I think it's a very positive motion that would assist people, particularly those minorities which I talked about before who are receiving or hearing of this legislation with great trepidation.

Mr. Parsons: The current legislation provides for counselling, but I'm not sure it's what we would consider to be counselling. It's really been kind of an outreach service that helps the two parties get together.

The requirement or sense that there must be counselling is pretty paternalistic. The question really is, should there be counselling? Should a person be able to

avail themselves of counselling? Of course. There's nothing to ever prevent a person seeking counselling. I'm sure that for a birth parent or an adoptee the entire path they're following to pursue a reunion or contact or obtain information has got to be pretty emotional. It is certainly the intention that for a party who believes they would benefit from counselling, referrals will be made to local community agencies where they can avail themselves of counselling services.

We don't believe this amendment is required.

The Chair: Mr. Sterling, may I recognize Ms. Churley and then—

Mr. Sterling: Can I just ask a question? Where is the assurance that somebody who can't afford to pay for counselling will get counselling? Is that in this legislation somewhere else?

Mr. Parsons: The issue of counselling in this province goes far beyond adoption. There's the whole question of who pays for counselling for any number of issues in one's life. There are community agencies in each and every part of Ontario that can provide access to counselling for those unable to afford it.

The Chair: Thank you, Ms. Churley.

Ms. Churley: I wanted to clarify. I have an amendment coming up after yours, and the difference I think is that the existing legislation has mandatory counselling. For instance, if I hadn't found my son on my own and we had gone through a process at the ADR, we would have had to. We would have had counselling forced on us, which is ridiculous because neither of us needed that kind of counselling. So I'm agreeing that that should go, but we believe there should be counselling made available which should be optional and no longer mandatory, but if somebody needs counselling, that it's made available to them.

What I'm trying to understand, Mr. Sterling—I believe yours is saying that it should be made available. I think you're saying it should still be mandatory, whereas my motion coming up, the next amendment, says that there should be optional counselling, that it should be there and provided for those who actually need it but it shouldn't be mandatory.

1030

Mr. Sterling: I would argue that mine doesn't make it mandatory; it says "available." But I think that this motion perhaps is wider than yours in that it also offers it to people who are not receiving information. In other words, if somebody is just very concerned that a knock is going to come on the door and they want to talk to somebody about what to do if the knock comes on the door, they can go and seek this kind of counselling. I don't think your amendment includes that. You talk about people who receive identifying information.

I would say that the kind of counselling that would be required here would not necessarily be the kind of counselling that would be needed in a generic sense, as Mr. Parsons has put forward, so that the people who would be involved in this might have greater skill in this area: knowing the law, knowing what the rights are,

knowing what to do and those kinds of things. I think there's a slight difference in the two amendments.

Ms. Churley: Yes, I see what you're saying, and that's a fairly major difference, because you're suggesting that because the law is going to change if this is passed, there may be people who become concerned and would want counselling just in case something happened.

Mr. Sterling: That's right.

Ms. Churley: I think that I couldn't support that, because I see all the time now where, without this legislation, people are connecting or not connecting and finding each other and forming relationships or not forming relationships outside of the government structure, and some get counselling and some don't. But to suggest that there's going to be a huge difference in people's lives—I think if the education is done properly people will realize that the likelihood of a knock on their door is, perhaps, with a contact veto less likely than it is now.

By the way, Mr. Parsons, I should tell you that there are very few knocks on the door even with the existing legislation, from all the evidence that we have, because of the respect people have for each other. When they do locate each other, if there is to be a relationship, they want it to work. That's an aside that I wanted to put on the record. Even with no contact vetoes right now and a lot of people finding each other privately, they're not doing that, which is interesting in itself. But there's no counselling made available to all of those people who are finding each other now. I just don't know how you could make that work.

Mr. Sterling: I think the example that the privacy commissioner brought forward about the woman who said she was thinking of suicide as a result of this change in legislation—she should be given counselling, and should be given specialized counselling in terms of this particular issue. I don't understand your reluctance to give her that kind of counselling. I just don't understand that.

The Chair: Any further debate? If none, I now shall put the question.

Ayes

Arnott, Sterling.

Nays

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Since we stood down page 31, we will come back to section 14. We'll move into section 15, page 33.

Ms. Churley: I move that subsections 15(1) to (7) of the bill be struck out and the following substituted:

"(1) Subsection 163(2) of the act is repealed and the following substituted:

"Duties

"(2) The registrar shall,

“(a) ensure that counselling is provided to persons who receive identifying information from the registrar;

“(b) ensure that counselling is made available to persons who receive non-identifying information from the registrar or to persons who are concerned that they may be affected by the disclosure of identifying information;

“(c) have searches conducted in accordance with sections 168 and 169.”

Mr. Sterling, after everything I just said, I believe my amendment actually does deal with what you said. If you look at (b), “receive non-identifying information from the registrar or to persons who are concerned that they may be affected by the disclosure of identifying information,” so, in fact, after everything I said, it’s there.

Interjection.

Ms. Churley: I’m not sure that yours isn’t clear enough in that it’s not mandatory, but this one provides that it be offered if needed.

Mr. Sterling: What does “have searches conducted in accordance with sections 168 and 169” mean?

Ms. Churley: I would have to look at the bill again now to see, because it’s been a while. You can either stand it down or give me a moment to look at that.

Mr. Sterling: Can you help us out? Do you know what it would mean?

Ms. Krakower: It’s sections 20 and 21, and it has to—

Ms. Churley: So it’s sections 168 and 169, right?

Ms. Krakower: That’s right.

Ms. Churley: It’s (c) of the—

Ms. Krakower: And they have to do with repealing sections of the act.

Ms. Churley: Pardon?

Ms. Krakower: The plain language: The disclosure of identifying information or non-identifying information by the registrar for health, safety and welfare purposes is repealed and the duty of the registrar to search on behalf of an adopted person for a birth relative is repealed in those sections.

Ms. Churley: So have searches conducted in accordance with sections 168 and 169.

Mr. Sterling: Does that make sense?

Ms. Krakower: You’re proposing to reinstate the search.

Ms. Churley: OK, I’m proposing to reinstate those sections. It’s been a while since we’ve done this bill. The summer’s gone by and I’ve forgotten certain parts.

Mr. Sterling: What additional duties would the registrar have, then?

Ms. Churley: I can’t find my bill again so I can specifically go to that section.

The Chair: Could staff be useful or helpful?

Ms. Churley: No, not at the moment.

Can staff help with this, please, while I’m trying to find exactly the reference? Surely you know what I mean here.

The Chair: Is the floor still with you, Ms. Churley?

Ms. Churley: The floor is still with me, yes. People have an option of giving me a moment or moving on to the next one and coming back to it.

The Chair: OK. Does anybody wish to make any comments in the meantime so that we don’t have to—

Ms. Churley: I’m having a little trouble here reminding myself.

Mr. Parsons: My poor memory is contagious, evidently.

Ms. Churley: Well, it has been the summer. We were hoping to have this passed months ago.

Mr. Parsons: You don’t know how sympathetic I am.

The Chair: All right, we’ll just wait. It’s OK.

Ms. Krakower: I believe that in your amendment you’re asking the registrar to continue, and also to continue the searches that the registrar would facilitate, as they do now under the current adoption disclosure unit.

Ms. Churley: Yes. I now have it in front of me. Thank you to staff here.

Mr. Sterling: Does it make sense, in that it sort of refers to the old regime?

1040

Ms. Krakower: An amendment was already passed that deals with giving authority to the custodian to conduct searches. Under the new legislation, if the bill is passed, the custodian would be able to conduct searches, and regulation would define those types of searches. In effect, the search piece that is referred to in Ms. Churley’s amendment has already been covered off by a government amendment that’s already been discussed here and passed.

Ms. Churley: You mean, in terms of the custodian, which is not quite the same thing as the existing—OK. What we’ve got here is the registrar. If you look at 168 and 169, what I mean by “have searches conducted in accordance with sections 168 and 169” is the sections that read, “The registrar may disclose identifying or non-identifying information that relates to an adoption to any person if, in the registrar’s opinion, the health, safety or welfare of that person or of any other person requires the disclosure.”

“(2) Subsection (1) applies whether the adoption order was made in Ontario or elsewhere.

“(3) A person who receives information under this section in the course of....”

So what it does is define basically who counselling should be made to under those sections. These describe the different circumstances under which searches are conducted. The registrar shall ensure that counselling is provided upon request following the procedure under these sections. It is defining, without writing it all out here, who would have access to that counselling.

Mr. Sterling: My problem is that these sections are a page in length, and I’m not certain that they fit within all of the rest of the context of this legislation we’re dealing with here. You have ages like 18 years. I don’t know. Does that fit in context with everything else?

Ms. Krakower: Certainly, under this bill, there would be no more registrar, so that would be overtaken.

Mr. Sterling: Ms. Churley, we could support your (2)(a) and (b), but (c) I don't think is possible to put into—

Ms. Churley: These amendments were written by legal. Talking from memory again, I can't quite remember back when we discussed these amendments and I asked legal counsel. There clearly must have been, I would assume, a legal reason why we would have had to add this part, and it did pass the legal test. So I'm a little confused, then, as to why staff here are saying that it's already been covered off and why it's in this amendment.

Ms. MacDonald: I think, Ms. Churley, that at the time you crafted your amendments, it may have been before we looked at the notion of the custodian doing a search. I think that's where the conflict arose. It was in the timing of the looking at a custodian search function in effect supplanting the registrar search function.

Ms. Churley: I see. OK. It is a memory thing, then, I understand. So could we have this amendment, then, with (c) removed?

The Chair: Yes, we can break the motion into sections. Do we agree to drop (c)? OK, drop (c). That's the motion on the floor. Any further debate on the motion? If there is none, I'll put the question. Shall the amendment, (2)(a) and (b), carry? Recorded vote.

Ayes

Arnott, Churley, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Ms. Churley, page 34.

Ms. Churley: I apologize to the committee and staff for that moment of confusion.

I move that subsection 15(8) of the bill be struck out.

I'm sure I'm going to have the same problem now.

The Chair: Do you have any comments?

Ms. Churley: Again, it pertains to the provision of counselling, but because I don't have a note as to exactly what it was, I forget what part of the provision of counselling it pertains to.

The Chair: Any further debate?

Mr. Sterling: What's subsection 163(4) of the act?

Ms. Churley: That's what we're just getting at now.

The Chair: Staff, can you assist?

Ms. Krakower: Section 15(4), clause 163(2)(c) of the act is repealed. That's the registrar's authority to ensure that counselling is made available to persons who receive non-identifying information and others is repealed. She is suggesting, I believe, that that section be struck out.

The Chair: Mr. Sterling, any other questions? Ms. Churley?

Ms. Churley: My amendment takes away mandatory counselling. That's what it pertains to. But if the other

amendment was voted down, how can this even be relevant?

The Chair: I hear you. Any further debate? If there is none, then let's put the amendment to the floor.

Ms. Wynne: Are you withdrawing it?

Ms. Churley: Yes. I'm going to withdraw it. It pertains to counselling, asking to remove the section that requires mandatory counselling, and there is no counselling any more.

The Chair: Page 34 is withdrawn.

There is no motion on page 35.

Shall section 15 carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 15 carries.

We'll go to section 16. Shall section 16 carry? Recorded vote.

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Those opposed? It carries.

Section 17, page 36.

Mr. Parsons: I move that subsection 165(1) of the Child and Family Services Act, as set out in section 17 of the bill, be struck out and the following substituted:

"Confidentiality of adoption information

"(1) Despite any other act, after an adoption order is made, no person shall inspect, remove, alter or disclose information that relates to the adoption and is kept by the ministry, a society, a licensee or a designated custodian under section 162.1 and no person shall permit it to be inspected, removed, altered or disclosed except as authorized under this act."

Mr. Sterling: What's the difference between what you're proposing and what's in the bill?

Mr. Parsons: This ensures that although information can now be given out, it can be given out only to the adoptee and the birth parent, not to birth kin or to the public in general.

Mr. Sterling: The other part is, does this tie in with the section which we've stood down?

Ms. Krakower: No, it doesn't.

Mr. Sterling: If we created, not the registrar as it was, but some kind of registry, it wouldn't affect that particular individual? I don't know the intent of the section. I wasn't in on the discussions as to how you were going to deal with the records.

The Chair: Mr. Parsons, I think the question is to you.

Mr. Parsons: I'm not sure what you're—

Mr. Sterling: A section was stood down before, because of Ms. Churley. I had some empathy for the position that there isn't really going to be a place where these records are to be kept. I didn't know whether it was the intent of the government members to bring forward an amendment to create some kind of central registry to allow people, for instance in private adoptions, to register a document or have somebody keep a document somewhere. Does this section relate to that section at all? If it doesn't, that's fine.

1050

Mr. Parsons: No, it does not.

Mr. Sterling: OK, that's fine.

The Chair: Any further debate? If there's none, I'll put the question. Shall the amendment carry? Recorded vote.

Ayes

Arnott, Churley, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: Uh—

Ms. Churley: I didn't vote.

The Chair: OK, so it is not—

It carries.

Now we'll deal with section 17. Shall section 17, as amended, carry? Those in favour?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: Section 17 carries.

Section 18, page 37.

Ms. Churley: I move that subsection 18(2) of the bill be struck out and the following substituted:

"(2) Subsection 166(4) of the act is amended by adding the following paragraph:

"1.1 An adult child of the adopted person."

I'd like to speak to this. I do remember this one quite well, and I'll explain it.

One of the critical flaws with the bill that I've outlined before that I feel must be corrected, and so does the adoption community that has been involved in this, is that it rescinds the right of an adoptee's birth parents and their respective kin to non-identifying information. Under the current law, these parties can have access to descriptive information about family members who have been adopted. That's an issue that I raised yesterday. For the benefit of those who weren't available to hear this, this has been rescinded.

Some people tend to think that there is just one file up there in Thunder Bay in the Registrar General's office: the original birth registration and birth certificate. But the registry also keeps files within the government, and that is where in fact searches are conducted. People can, and have always been able to, apply for so-called non-identifying information. As I explained, I received that

non-identifying information and it helped me with my search. It is a really critical piece of information for those who are searching.

Let me give an example: My name, Churley, which my son had access to since he was very young, is a very uncommon name, an old Newfoundland name, and is easy to track down. But if you're looking for your birth mother and her name is Smith, and that's on your adoption paper and you were born 30 or 40 years ago or whatever, without some of that non-identifying information that gives some descriptive information, the search can be very, very difficult, if not impossible. The fact that that is rescinded is a very serious problem. That is what this amendment does.

The non-identifying information provides background information about the birth or adoptive family. As I said, it's extremely important to those who are trying to learn more about family members. Often, adoptees will seek out this information prior to deciding if they want to search. It provides a bridge between knowing and not knowing. We hear this a lot. It's extremely important information to people looking.

The second part of the amendment will expand the right to non-identifying information to adult children of adoptees so that they can seek out answers about their genealogy, heritage and, in particular and most importantly, medical information.

Mr. Parsons: We don't disagree with the intent of this amendment, but it is our belief that it should be handled through regulation rather than legislation because experience may prove that there is a need or desire to expand the circle of who will have access to non-identifying information. It is our intention to cover this through regulation so that changes can be made easier. Certainly, we agree with the philosophy of this amendment.

The Chair: Ms. Churley, or back to Mr. Sterling.

Ms. Churley: Go ahead.

Mr. Sterling: You're talking about health information here?

Ms. Churley: Yes, primarily.

Mr. Sterling: I don't have any objection to that, but isn't it better to try to define this in some way in the legislation rather than—I've heard a lot of criticism today about the rules not being clear in the past. I continue to see this tendency of the government to go toward regulation because they haven't thought this thing through.

Mr. Parsons: The balance that has to be achieved is between whom the information does and doesn't go to—should it go to siblings, and should it go to children of siblings.

Ms. Churley: It does already.

Mr. Parsons: I'm not disagreeing with that, but ultimately it's how far should it go. We have indicated, and I believe the staff have mentioned it, that we're committed to consultation during the creation of the regulations. It continues to be our belief that this requires some consultation and will be incorporated in regulations. If two or three years from now or at the review at

five years there's a need for it to be changed, if it is in regulations it can be changed fairly easily.

The Chair: Any further debate? If there is none, I will now put the question. Shall the amendment carry? Recorded vote.

Ayes

Arnott, Churley, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We'll move to page 38. Ms. Churley, please.

Ms. Churley: I move that subsections 18(4) and (5) of the bill be struck out.

All I can tell you at the moment is that it refers to the provision of non-identifying information. I'd have to look again, but I'm sure that it's complementary to the amendment that was just voted down. It's right here.

The Chair: Any debate on this amendment? If there is no additional—

Mr. Sterling: Just wait a minute.

The Chair: Yes.

Ms. Churley?

Ms. Churley: Sorry; this relates back to counselling again, and my amendment would strike out the mandatory counselling. Is that not correct? Again, I can't quite remember the justification for this one.

Ms. Laura Hopkins: The motion proposes striking out subsections 18(4) and 18(5) of the bill, which refer to current provisions of the act dealing with disclosure of information and counselling. The effect of the motion would be to preserve in the act a provision requiring the registrar to disclose information in specified circumstances and also to preserve in the act a provision requiring counselling to be made available when the registrar discloses this information.

Ms. Churley: Upon request. That's fine. Thank you for that.

The Chair: Is there any further debate on this amendment? If there is none, I shall put the question. Recorded vote.

Ayes

Arnott, Churley.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: It does not carry.

1100

Mr. Parsons, page 39.

Mr. Parsons: I move that subsection 18(4) of the bill be struck out and the following substituted:

“(4) Subsection 166(5) of the act, as amended by subsection (3), is amended by striking out the portion before paragraph 1 and substituting the following:

“Transition

“(5) If a person has made a request to the registrar under subsection (4) as it reads immediately before the day on which subsection 18(2) of the Adoption Information Disclosure Act, 2005 comes into force, asking the registrar for non-identifying information that relates to an adoption, the registrar shall do one of the following ...

“(4.1) Subsection 166(5) of the act, as amended by subsections (3) and (4), is repealed.”

The Chair: Any questions or comments on the motion?

Mr. Arnott: I'd like to ask the parliamentary assistant for an explanation.

Mr. Parsons: Any application for non-identifying information received by the adoption disclosure unit before the enactment of the new legislation will continue to be processed. The applications will not die when the new legislation comes into effect.

Ms. Churley: It's an interim measure to provide this information, which is entirely supportive—

Mr. Parsons: It's a transition, yes.

Ms. Churley: —but of course it still begs the question, what is going to happen to that non-identifying information after? I support this, it's important that it's there, but I think it highlights that major issue that is not going to be dealt with in this legislation and I just want to highlight again how important that is going to be to get done in the regulations.

The Chair: Is there any the further debate? I shall now put the question.

Ayes

Churley, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: Carried.

Page 40, Mr. Parsons.

Mr. Parsons: I move that subsection 18(6) of the bill be struck out and the following substituted:

“(6) Subsection 166(7) of the act is amended by striking out ‘and shall also make counselling available to him or her’.

“(6.1) Subsection 166(7) of the act, as amended by subsection (6), is repealed.”

The Chair: Any comments or discussion?

Mr. Sterling: What does that mean?

Mr. Parsons: It's the requirement for mandatory counselling prior to information being shared.

The Chair: Is there any further debate?

Ms. Churley: This, as I understand it, gets rid of counselling, either optional or mandatory, right away. You're removing counselling even during the interim period; is that correct?

Mr. Parsons: This becomes effective when the bill is proclaimed. It removes the requirement for mandatory

counselling. Any individual is always free to seek out counselling in the community, as they have in the past.

Ms. Churley: But I mean the government-provided counselling. Are you saying that this will—

Mr. Parsons: This removes the mandatory requirement.

Ms. Churley: Are you saying, then, that the government will maintain counselling under request within this—

Mr. Parsons: I'm pretty sure I didn't say that; no.

Ms. Churley: No, but what you said left the impression that that was so. It gets rid of counselling, period. The government-sponsored counselling is gone—

Mr. Parsons: Yes.

Ms. Churley: —either mandatory or upon request.

Mr. Parsons: But it does not preclude an individual seeking out counselling.

Ms. Churley: Of course; it's a free country. Everybody can get counselling. But the government counselling will be gone.

Mr. Parsons: Right.

Mr. Sterling: Why wouldn't you maintain what the existing system is until you're going to change the system? You're sort of halfway between. Why complicate it like this? It just seems to me that if people enter into the application process with the idea that mandatory counselling is going to be there—the present process requires both parties to agree to the disclosure. So part of their decision might be based upon the fact that there's mandatory counselling. We're saying we're going to carry on with what's happened, but the counselling may not happen to the other party. Why are we doing that?

Mr. Parsons: The requirement that it be mandatory is the primary focus, in that it is—I'm repetitive. It's extremely paternalistic to say you must have counselling prior to it. So, if we set that aside, the question that I believe you're asking is, why does the government not continue to say, "Well, here are the counselling services?" I think this—

Mr. Sterling: No. I'm saying as long as the present system is in place, which is going to be until the proclamation plus 18 months.

Mr. Parsons: Yes. I think it uncomplicates it in that, is it truly the function of the custodian that provides the information to also provide counselling? No. Counselling is a separate function that is available in other places in this province with other individuals. Those seeking out information or those being contacted may very well choose to access counselling, but it is not the intention that it be part of this process. They are perfectly free to seek counselling elsewhere.

Mr. Sterling: I guess my concern is that you enter into a process with the understanding of what the process is. You're saying that the process is going to continue on for another 18 months or so, or two years or whatever. All of the sudden, the rules have changed. I on one side went into the process with this understanding: that both I would be required to get counselling, as would the other

party to this disclosure. Now we're changing what the inner rules are.

The other part too is, I don't know how all these counsellors are hired or whatever. I would imagine that counselling has a wide, wide variety in its scope and state. I mean, counselling may be very minor in some cases, but it may be very major. Perhaps the staff would like to comment.

Ms. MacDonald: I think it may be helpful to distinguish. As Mr. Sterling indicates, there is a wide variety of counselling. The ADU at the moment provides counselling which ranges from more facilitative counselling through to something that isn't therapeutic counselling. Clearly it is not, because they're not qualified as professional therapeutic counsellors, but is, let's say, a sympathetic, supportive approach in dealing with clients.

It was our intent that not therapeutic counselling, but the other kind of counselling, the facilitative counselling, could indeed continue until the new regime comes into place. I erred in not distinguishing the types of counselling for the parliamentary assistant, and I apologize for that.

The Chair: Thank you. Any further debate?

Mr. Sterling: That facilitating counselling is not negated by this amendment.

The Chair: Thank you. I shall put the question. Recorded vote.

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley.

The Chair: The motion carries.

Mr. Parsons, page 41.

Mr. Parsons: I move that section 18 of the bill be amended by adding the following subsections after subsection 18(9):

"(10) Section 166 of the act is amended by adding the following subsection:

"Transition: cessation of activities

"(10) On the day on which this subsection comes into force, the registrar shall cease any activity under subsection (5) that is not yet completed in connection with a request made under subsection (4).

"(11) Subsection 166(10) of the act, as enacted by subsection (10), is repealed."

The Chair: Are there any comments, any questions?

1110

Ms. Churley: I don't think I can support this because, if I understand it correctly—I have an amendment that deals with this, that requests the ADR that non-identifying information not completed when the act goes into force will remain unfinished. I mean, any information that's not completed but is in the process, once the act comes into force, that's it; it will not be com-

pleted. I think that's what your amendment does. Am I correct on that?

Mr. Parsons: Right.

Ms. Churley: That even if it's in the hopper, in process—

Mr. Parsons: It will be transferred over to the custodian.

Ms. Churley: To the custodian.

Mr. Parsons: Yes.

Ms. Churley: But it says, "Subsection 166(10) of the act, as enacted by subsection (10), is repealed." Can you clarify for me that that will continue to—

Ms. Krakower: Yes, I can. The policy intent is that after the registrar winds down at the end of the transition period, the custodian of adoption information would then carry on any request that's outstanding for dealing with the provision of non-identifying information.

Ms. Churley: OK.

The Vice-Chair (Mr. Khalil Ramal): Is there any discussion? Is everybody in favour?

Ms. Wynne: Could I ask for a three- to five-minute recess, please?

The Vice-Chair: Any objection to a five-minute recess? No?

Ms. Churley: It's just that I was about to ask to have my next few amendments stood down because I'm doing double duty on a few things today for my caucus and I have to be gone—

Ms. Wynne: You're asking for—

Ms. Churley: I have to leave. I was about to ask for my next few amendments to be stood down until I return.

Ms. Wynne: That's fine.

The Vice-Chair: No problem. Shall the motions carry?

Ms. Wynne: I've asked for a five-minute recess, but Ms. Churley wanted to ask for her motions to be stood down. You're going to put that request?

Ms. Churley: Yes, I've put that request. I can't stay, so I'll let you figure it out.

Ms. Wynne: OK.

Ms. Churley: I have a few amendments coming up. Could I request that they be stood down until I return?

The Vice-Chair: Is there any objection?

Ms. Wynne: No.

Ms. Churley: Thank you.

Mr. Sterling: You're going to return today?

Ms. Churley: Oh, yes. I'll be back shortly.

The Vice-Chair: We're having a five-minute recess. Be back by 20 after.

The committee recessed from 1117 to 1122.

The Chair: We'll deal with 41 now. Any further debate on page 41? If there is none, then I shall put the question. Shall the amendment carry?

Mr. Arnott: Mr. Chair, would it be possible to ask for another five-minute recess, since two of the members who are very interested in this bill are not here?

The Chair: Is there consent?

Mr. Parsons: Just vote with us, and let's get on with it.

The Chair: Is there consent, please? Yes, five minutes.

The committee recessed from 1122 to 1127.

The Chair: We are resuming. When we went for the break, we were ready to take the vote on page 41. If there is no further debate, I will now put the question. Shall the motion carry? This is a recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The motion carries.
Shall section 18, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 18 carries.

Ms. Wynne: Mr. Chair, I just wanted to clarify that before we took the first break, Ms. Churley had asked that her motions be stood down until she returns. I just wanted to be clear that we had agreement on that.

The Chair: Do we agree on that? Yes. Therefore, the next one, 41(a) and (b), will be stood down. We'll move on to page 42 and 42(a).

Mr. Parsons: I move that subsections 19(1) to (3) of the bill be struck out and the following substituted:

"19(1) Subsection 167(1) of the act is repealed.

"(2) Subsections 167(2) and (3) of the act are repealed.

"(3) Subsection 167(4) of the act is repealed and the following substituted:

"Transition

"(4) If a person has applied under subsection (2) as it reads immediately before the day on which subsection 19(2) of the Adoption Information Disclosure Act, 2005 comes into force to a society or to the registrar to be named in the register,

"(a) the registrar shall enter the applicant's name in the register; and

"(b) the registrar shall then make a search to determine whether both of the following persons are named in the register:

"i. the adopted person, and

"ii. another person who is his or her birth parent, birth grandparent, birth sibling or another person named by the registrar in the register as if he or she were a birth parent.

"(3.1) Subsection 167(4) of the act, as re-enacted by subsection (3), is repealed.

"(3.2) Subsection 167(5) of the act is repealed and the following substituted:

"Further consents

“(5) If the registrar determines that an adopted person and another person described in subsection (4) are both named in the register, the registrar shall give both persons an opportunity to consent in writing to the disclosure of information in accordance with subsections (8) and (9).

“(3.3) Subsection 167(5) of the act, as re-enacted by subsection (3.2), is repealed.”

The Chair: Is there any debate on this motion?

Mr. Sterling: I'd like to know what's happening. What does all this do?

Mr. Parsons: This is a transition provision that allows the registrar to place a person's name in the adoption disclosure registry and, if a match and consent is made between the two, to continue the function of bringing the two parties together.

Mr. Sterling: So instead of doing away with 167(4), you've kept that piece in place?

Mr. Parsons: This continues the function of the adoption disclosure registry. It effectively continues it through the transition period. The custodian assumes responsibility. It's a transition only.

The Chair: Any further debate? If there's none, I shall now put the question. A recorded vote.

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: The amendment carries.

We will defer and deal later with section 19. We'll move into section—

Interjection.

The Chair: You're right. I'm sorry. Page 43 then. Mr. Parsons.

Mr. Parsons: I move that section 19 of the bill be amended by adding the following subsections after subsection 19(15):

“(16) Section 167 of the act is amended by adding the following subsection:

“Transition: cessation of activities

“(15) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with an application made under subsection (2) or a consent given under subsection (5).

“(17) Subsection 167(15) of the act, as enacted by subsection (16), is repealed.”

The Chair: Any questions? Any debate? If there's no debate, I will put the question. Shall the motion carry?

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It does carry.

We will be going to page 46. Mr. Parsons, please.

Interjection.

The Chair: We cannot, because we stood down number 41a and 41b, and 45 is also NDP, so 46, please.

Interjection.

The Chair: That's fine. If you look at page 45, since originally the NDP had asked but there was no notice, I felt that we should wait. I thought we should wait just in case—

Mr. Parsons: Sure.

The Chair: I mean, what's the big deal? Let's move on to page 46.

Mr. Parsons: I move that the bill be amended by adding the following section after section 20:

“20.1(1) The act is amended by adding the following section:

“Transition: request for search

“168.1(1) Such persons as may be prescribed may ask the registrar to search on the person's behalf in such circumstances as may be prescribed for a specific person in a prescribed class of persons.

“Same

“(2) The registrar shall have a discreet and reasonable search made for the specific person.

“(2) Section 168.1 of the act, as enacted by subsection (1), is repealed.”

Mr. Sterling: This is in the interim, is it?

Mr. Parsons: No. This establishes the provision for the new searches to take place after the custodian has assumed responsibility. This is the searches that will be for medical reasons.

Ms. MacDonald: This would be an interim provision. You're quite right: It is new searches. It would be new searches that would be coming in during the transition period. So before the kicking in of the custodial function, it would in effect allow new searches to be taken in and acted upon by the registrar before the custodian can take over.

The Chair: Any further debate? If there is none, I shall put the question on a recorded vote. Those in favour?

Ayes

Arnott, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries.

We will go to section 21, page 48. Mr. Parsons, please.

1140

Mr. Parsons: I move that section 21 of the bill be struck out and the following substituted:

“21(1) Subsections 169(1) and (2) of the act are repealed.

“(2) Subsection 169(3) of the act is repealed and the following substituted:

“Transition

“(3) If a person has made a request to the registrar under subsection (1) or (2) as those subsections read immediately before the day on which subsection 21(1) of

the Adoption Information Disclosure Act, 2005 comes into force, asking the registrar to search on the person's behalf for a specific person,

“(a) the registrar shall have a discreet and reasonable search made for the specific person; and

“(b) the registrar shall seek to ascertain whether that person wishes to be named in the register.

“(3) Subsection 169(3) of the act, as re-enacted by subsection (2), is repealed.

“(4) Subsection 169(4) of the act is repealed.

“(5) Section 169 of the act is amended by adding the following subsection:

“Transition: cessation of activities

“(5) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with a request made under subsection (1) or (2).

“(6) Subsection 169(5) of the act, as enacted by subsection (5), is repealed.”

Mr. Sterling: Does this change anything in terms of the status quo as to the procedures now? Does it add additional searching functions for the registrar in the interim?

Mr. Parsons: No.

Mr. Sterling: Just the status quo?

Ms. Krakower: During the transition, just the status quo. You're correct.

The Chair: Is there any debate? If not, I will put the question. Shall the motion carry?

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Thank you.

Now we go to section 22, page 50. Mr. Parsons, please.

Mr. Parsons: I move that subsection 22(2) of the bill be struck out and the following substituted:

“(2) Subsection 170(2) of the act is repealed.

“(2.1) Subsection 170(3) of the act is amended by striking out ‘When a person makes a request under subsection (2)’ and substituting ‘If a person has made a request to the registrar under subsection (2) as it reads immediately before the day on which subsection 22(2) of the Adoption Information Disclosure Act, 2005 comes into force.’

“(2.2) Subsection 170(3) of the act, as amended by subsection (2.1), is repealed.”

The Chair: Are there any questions or debate? Mr. Sterling?

Mr. Parsons: An explanation?

The Chair: Yes, please.

Mr. Parsons: Again, a transition provision to allow the registrar to disclose non-identifying information that relates to an out-of-province adoption after the section authorizing such a request was repealed.

The Chair: Any further debate? If there's none, I'll put the question. Shall the amendment carry?

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Thank you.

Number 51. Mr. Parsons, please.

Mr. Parsons: I move that section 22 of the bill be amended by adding the following subsections after subsection 22(7):

“(8) Section 170 of the act is amended by adding the following subsection:

“Transition: cessation of activities

“(8) On the day on which this subsection comes into force, the registrar shall cease any activity under this section that has not yet been completed in connection with a request made under subsection (2).

“(9) Subsection 170(8) of the act, as enacted by subsection (8), is repealed.”

The Chair: Is there any debate on this section?

Mr. Sterling: Where is the provision for the kick-in date when the registrar ceases activity? Is the date prescribed?

Ms. Krakower: The date is not prescribed.

Mr. Sterling: So it may come into effect *[inaudible]* the administration. What's happening?

Ms. Krakower: It's the date on which the act would be proclaimed, and it would depend—you're correct—on business processes being in place.

Mr. Sterling: No, no. The act is proclaimed, and then isn't there a time frame after the act is proclaimed?

Ms. Krakower: There likely would be an 18-month period between the date of royal assent and proclamation.

Mr. Sterling: No.

Ms. Susan Yack: If I could—

Mr. Sterling: Yes.

Ms. Yack: —different sections of the bill would be proclaimed at different times, so that, for example, the ability to request the information, the repeal of that section, would be proclaimed earlier. This transition section allows the registrar to continue to process the requests, and then the entire bill would be proclaimed, it's intended, 18 months after royal assent.

Mr. Sterling: Is the 18 months in the legislation?

Ms. Yack: No, that's not in the legislation.

Mr. Sterling: So there's no definite time that people know this trigger is going to be pulled.

Ms. Krakower: There is an intent to—

Mr. Sterling: I know the intent, but people's lives are based upon what is going to happen.

Ms. Krakower: There is an intent to conduct a widespread public education campaign, well in advance of the date on which the full act would be proclaimed, to let people know what the implications are, both adoptees and birth parents, so that they can take action in terms of applying for no-contact notices etc. well in advance.

Mr. Sterling: Do you not think it would be better if it were contained in the legislation as to when—OK, that's fine.

The Chair: Any further debate? If there is none, I will put the question. Recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The motion carries.

Now we will deal with sections 23 to 28. There are no amendments. I will ask for a recorded vote, unless there are any questions.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Those sections carry.

We'll go to section 29, page 52.

Mr. Parsons: I move that clause 220(1)(c.2) of the Child and Family Services Act, as set out in subsection 29(2) of the bill, be amended by adding at the end "and governing the fees that the designated custodian may charge in connection with the exercise of its power and the performance of its duties."

The Chair: Any debate on this?

Mr. Sterling: Can you give me an explanation of what this is about?

Mr. Parsons: This will enable the custodian to charge fees for service provision to offset some of the operating costs.

The Chair: Any further debate? If there's none, I will put the question. Recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: It carries.

Page 53.

Mr. Parsons: I move that section 29 of the bill be amended by adding the following subsections after subsection 29(4):

"(4.1) Subsection 220(1) of the act is amended by adding the following clause:

"(f.1) prescribing the matters referred to in subsection 168.1(1)";

"(4.2) Clause 220(1)(f.1) of the act, as enacted by subsection (4.1), is repealed."

This amendment will allow for the intake of new searches during the transition period for serious medical concerns.

The Chair: Is there any debate? If there's none, I will put the question. Recorded vote again.

Ayes

Arnott, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Shall section 29, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries.

Section 29.1 is a new section

1150

Mr. Parsons: I move that the bill be amended by adding the following section after section 29:

"29.1 The act is amended by adding the following section:

"Review re disclosure of adoption information

"225. The Lieutenant Governor in Council shall ensure that a review of the operation of sections 161 to 172 and section 176.1 is conducted within five years after section 29.1 of the Adoption Information Disclosure Act, 2005 comes into force."

Mr. Arnott: I'd like to move an amendment to the amendment.

I move that section 225 of the Child and Family Services Act, as set out in motion 54, be amended by striking out "The Lieutenant Governor in Council shall ensure that a review" and substituting "The assembly shall inure that a public review".

This is similar and consistent with a motion we put forward earlier this morning between motions 24 and 24(a), calling upon the government members to support a more public process in five years' time to review this whole thing, as opposed to a private administrative process that would not necessarily allow for public input or any accountability.

The Chair: Is there any further debate on the amendment to the amendment?

Mr. Sterling: This is a similar motion to the one we had before with regard to this whole matter as to whether we have a public review or a review behind closed doors dealing with administration matters. My view is that this is such an important topic and such an important matter that there should be a public review, not only from the point of view of looking at where this is going to fail—and it will fail for a significant minority of the some 500,000 people who will be affected across this province—but it's also important from the point of view of saying, can we get better access to health records, can we get better information during the adoption proceeding going forward, and maybe even going backwards too.

Number one, I don't know why it's here. If in fact the cabinet is going to decide to have an administrative

review, they can do that when they want. They can do it after one year; they can do it after two years; they can do it whenever they want to do it. You don't need it in the act. By just dumping all of the so-called obligation on the cabinet—when you say “review,” they can do a very cursory review; it could be a two-hour review or it could be a two-year review. The section is meaningless without public input into the process. I just think that this again is one of those sections the government is putting forward, in a lot of ways covering up the fact that they don't want to hear—they want to give the impression that they want to be consulted with regard to this process, but they don't.

Basically, this is internal, it's about the administration: Are the ducks in order and all the rest. That's a job for the public accounts committee or the auditor to look at; it's not really a job for the bureaucracy to look at in terms of what's going on. They always do that in conjunction with the auditor. So this is a phony section unless you have the public involved in it.

The Chair: If there is no further debate, I will put the question. Shall the amendment to the amendment carry?

Ayes

Arnott, Sterling.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

We go back to the original motion. Is there any further debate on that? If there's none, I'll ask for a recorded vote.

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries. Therefore, we move to section 30, page 55.

Mr. Parsons: I move that subsection 65(8) of the Freedom of Information and Protection of Privacy Act, as set out in section 30 of the bill, be struck out and the following substituted:

“Information relating to adoptions

“(8) This act does not apply with respect to the following:

“1. Notices registered under section 48.2.2 of the Vital Statistics Act and notices and information registered under section 48.3 of that act.

“2. Notices, certified copies of orders and other information given to the Registrar General under sections 48.4 to 48.4.5 of that act.

“3. Notices and other information given to a designated custodian by the local director of a children's aid

society under section 48.4.4 of that act and information given to a birth parent or an adopted person under that section.

“4. Information and records in files that are sealed under section 48.5 of that act.”

This amendment reflects some other changes that we previously made to ensure that the adoption information remains available to the adoptee and to the birth parent, but is not open to the general public under freedom of information.

Mr. Sterling: In my view—or from what I see, and maybe you can confirm this—this widens the exemptions from the freedom of information act, rather than narrows them. Is that correct?

Mr. Parsons: This information was always exempt from the freedom-of-information act, but it has now been moved to a different act. One never could, under the freedom-of-information act, access adoption information on another individual.

Mr. Sterling: No, that's not my question. The existing section says, “This act does not apply with respect to information and records that are unsealed by virtue of section 48.1 or 48.2 of the Vital Statistics Act or notices and information registered under section 48.3 of that act.” My question is, is this section wider than the section I just read in the original draft of this bill?

The Chair: Before we go any further, can I just have a clerical correction from staff, please?

The Clerk Pro Tem (Ms Lisa Freedman): Mr. Parsons, can we just get you to read paragraph 4 back in, because you read the word “sealed” and it says “unsealed” in the drafted motion, so if you could reread that.

Mr. Parsons: “4. Information and records in files that are sealed under section”—

Interjections.

The Chair: Maybe you have a different page. Just wait. It should be “unsealed” unless you have an old page. Does it say “sealed” or “unsealed”?

Mr. Parsons: It says “sealed.”

The Chair: It's the wrong one, then. Sorry. There was a change made and you may have—

Interjection: It's an error.

The Chair: It's an error.

Mr. Parsons: I feel exonerated. Mine does say “replacement motion,” but it says “sealed,” if you would witness it, Mr. Leal.

The Chair: We do have a replacement for that, so just read clause number 4.

Mr. Parsons: Mr. Leal confirms that I'm not absolutely wrong.

“4. Information and records in files that are unsealed under section 48.5 of that act.”

The Chair: Thank you. Is there any further debate?

Mr. Sterling: Under the original provision in this act, as was introduced, the words which I just read exempted certain information from the freedom-of-information act. Am I correct in saying that this new section actually exempts more information from the freedom-of-information act—which I support. Is that correct?

Ms. Krakower: It's not actually broadening the provisions that existed, but this amendment results from incidental amendments to the Vital Statistics Act to include contact preferences that were introduced earlier.

Mr. Sterling: So is it narrower?

Ms. Krakower: No.

Mr. Sterling: You say it's the same.

Ms. Krakower: It's the same.

The Chair: Is there any further debate? If there's none, I will now put the question.

Ayes

Arnott, Churley, Fonseca, Leal, Parsons, Ramal, Sterling, Wynne.

The Chair: It carries. Thank you. I will ask for a vote on section 30. Shall section 30, as amended, carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The section carries. I will ask for another vote on sections 31, 32 and 33. There are no changes.

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The sections carry.

At this time, we are going to break for lunch. We will be back and we will try to address page 56.

The committee recessed from 1203 to 1310.

The Chair: Thank you for coming back. We left off before lunch at page 56. Mr. Parsons?

Mr. Parsons: Yes, Chair. I wish to withdraw amendment 56.

The Chair: So 56 has been withdrawn.

Interjections.

The Chair: We can go back and start addressing the ones that were stood down, which are pages 41a and 41b. Am I right? Ms. Churley, please.

Ms. Churley: I move that section 19 of the bill be struck out and the following substituted:

"19(1) Subsection 167(5) of the act is amended by striking out 'after ensuring that each of them receives counselling' and substituting 'after ensuring that counselling has been made available to each of them upon request.'

"(2) Subsection 167(6) of the act is amended,

"(a) by striking out 'the material described in paragraphs 1, 2 and 3' in the portion before paragraph 1 and substituting 'the following material'; and

"(b) by striking out paragraph 3.

"(3) Clause 167(9)(a) of the act is amended by striking out 'first ensuring that each person to whom the material is made available receives counselling' and substituting 'first ensuring that counselling has been made available upon request to each person to whom the material is made available.'

"(4) Clause 167(9)(c) of the act is amended by striking out 'if the registrar is satisfied that the person will receive appropriate counselling' at the end and substituting 'if the registrar is satisfied that appropriate counselling will be made available to the person upon request.'

"(5) Subsection 167(11) of the act is amended by striking out 'first ensuring that each person to whom the material is made available receives counselling' and substituting 'first ensuring that counselling is made available upon request to each person to whom the material is made available.'

"(6) Subsection 167(13) of the act is repealed and the following substituted:

"Duty of society

"(13) A society shall make counselling available upon request to persons who receive identifying information from the society, who are named or may wish to be named in the register or who are concerned that they may be affected by the disclosure of identifying information."

The Chair: Is there any debate on the motion?

Ms. Churley: If I could explain, I think we've lost this battle, but it's my last kick at the can here in terms of providing counselling upon request—not mandatory—and I'm referring to section 19, where all of these clauses that provide for counselling are repealed. This is my attempt to, yes, repeal the mandatory aspect but actually then include sections that would allow for counselling upon request provided by the agency.

Mr. Sterling: Did we not amend this section already—

The Chair: We did? Mr. Parsons, can you assist?

Mr. Sterling: —which effectively put the status quo in place for the interim? Is that correct?

Mr. Parsons: For the interim, correct.

Ms. Churley: Only for the interim, not after.

Mr. Sterling: I guess this section would try to do what we've tried to do in another amendment.

Ms. Churley: If you look at section 19 and then look at the act—you see, I got my act together over lunch and revisited my amendment, so I know what I'm talking about here. If you turn to page 11 in this act, you will see that, without definition here—but all of these subsections within the Child and Family Services Act have been repealed, anything to do with counselling.

Mr. Sterling: We put some back in. That was the first position—

Ms. Churley: For the interim, but—

Mr. Sterling: For the interim, for the transition.

Ms. Churley: Yes, but that's all.

Mr. Sterling: After the transition—

Ms. Churley: It disappears.

Mr. Sterling: —there's no counselling offered other than the generic counselling which a person may wish to get.

Ms. Churley: Yes. That's what this is attempting to do.

Mr. Sterling: But I don't know whether it does it. This changes the regime during the interim period as well, as I would read it.

Ms. Churley: I don't think so.

Mr. Sterling: In other words, it switches during the interim from a mandatory to a request-driven counselling system. Is that correct?

Ms. MacDonald: I believe the primary impact of Ms. Churley's proposed amendment would be in the future regime, but it would depend really on when the act, if approved, were proclaimed as to when the impact would arrive. But I believe your primary intent, is it not, Ms. Churley, is to ensure that there is counselling provided on a going-forward basis?

Ms. Churley: I was assuming that. I wasn't sure if it would take place right away. But I must say that if the impact would be felt right away, that would be OK too, because certainly those in the adoption community say that having mandatory counselling, even under the present regime, is not necessary, that lots of people are forced to take counselling. It's taxpayers' money and we're paying for these counsellors. Even if they don't want it, they're forced to before or during a reunion. My purpose was to make sure that there is counselling after the act comes into being but, on the other hand, mandatory counselling is not needed anyway, in my view and in the adoption community's view.

The Chair: Is there any further debate?

Mr. Sterling: My problem is I don't know whether the words reflect the intent. I agree with Ms. Churley in terms of offering counselling, not only for people who have sought information but for people who may have information revealed about them. But I'm not sure that those words are reflected in this particular amendment or that they affect the interim as well.

Ms. MacDonald: We have already dealt with the transition, as the parliamentary assistant pointed out. So the effect of this would be on the going-forward basis. It does, however, presuppose the existence of the adoption disclosure unit in its language. We have, through earlier approved provisions of the bill, provided that the function of the adoption disclosure unit would be subsumed within the custodian. The language in Ms. Churley's motion in subsection 19(4) refers to the registrar, which is a position that exists within the current adoption disclosure unit but would not occur within the custodian. I'm not sure if that answers your question, Mr. Sterling.

The Chair: It does. Any further debate? I will now put the question. Shall the motion carry?

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Now we are going to take a vote on section 19. Shall section 19, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 19 does carry.

The next is section 20. Ms. Churley, it's page 45.

Ms. Churley: I recommend that the committee members vote against section 20 of the bill.

The Chair: There was a question. Therefore, we are only able to deal with section 20. I wanted to hold in case you had a question. I will ask for the vote on section 20, unless there are any questions. If there isn't, I will ask for the vote. Shall section 20 carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: Section 20 carries.

Page 47, Ms. Churley, section 21.

Ms. Churley: I move that section 21 of the bill be struck out and the following substituted:

"21(1) Section 169 of the act is amended by striking out 'registrar' wherever it appears and substituting in each case 'registrar appointed by the minister or a person designated by the minister'.

"(2) Subsection 169(4) of the act is amended by striking out 'may disclose information to the person who made the request, in accordance with section 167, as if both persons were named in the register' and substituting 'may disclose information in accordance with this act to the person who made the request'.

"(2) Section 169 of the act is amended by adding the following subsection:

"Designated person

"(5) The minister may designate persons or classes of persons to exercise the powers and perform the duties described in this section and may impose such conditions with respect to the designation as the minister considers appropriate.

"Same

"(6) A person who wishes to be designated under subsection (5) must satisfy such criteria as may be

prescribed, including criteria relating to the person's training and experience."

The Chair: Are there questions?

Mr. Sterling: I assume this would mean that there will be full disclosure during the interim period. Is that what you mean?

Ms. Churley: I see this as problematic, and it's in keeping with the Liberals' mandate to streamline the government. What the legislation does is dismantle the government's role in assisting with search and reunions and providing the counselling upon request. That's what this section addresses.

Mr. Sterling: But I think the government, in fairness, has amended all of the legislation, all of the old mechanism that, during the interim, was going to be there.

Ms. Churley: During the interim, but after the act is passed. Now, these amendments were written before the amendment of the custodian came forward, so we now have that included, although it's still pretty vague, and we don't know what that custodian is going to do. This amendment simply tries to retain in the new act those services that are now provided and will be in the interim but then will disappear. That's all this does.

The Chair: Is there further debate? If there's none, I will put the question. Shall the amendment carry?

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

Now I would like to take a vote on section 21, as amended.

1320

Ms. Wynne: Sorry, could you just repeat what you said? I'm not sure—

The Chair: Section 21. There was an amendment already put before. The second was refused.

Shall section 21, as amended, carry?

Ayes

Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: Section 21 carries.

Now we are on section 22, and it's page 49. Ms. Churley?

Ms. Churley: I move that section 22 of the bill be struck out and the following substituted:

"22. Subsection 170(2) of the act is amended by adding the following paragraph:

"1.1 An adult child of the adopted person."

We have dealt with something similar to this before. What I'm trying to do here, again, is pertaining to retaining, not rescinding, the existing rights of adoptees, birth parents and their respective kin to non-identifying information. Again, under the current law—and this is very, very important—these parties can have access to the descriptive information we talked about earlier about family members who have been adopted. That is a right that kin of adoptees already have, and it's going to be rescinded. Section 170 of the Child and Family Services Act provides this right to persons adopted outside of Ontario and their families; however, the current bill before us is repealing this part of the act. I won't go into details again, but I explained earlier why this non-identifying descriptive information is so important.

The second part of the amendment expands the right to non-identifying information to adult children of adoptees so that they can also seek answers about their background, their medical history, and heritage, criteria, stuff like that.

The Chair: Is there any further debate? If there's none, I will take the vote on the amendment. Shall the amendment carry?

Ayes

Churley.

Nays

Fonseca, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.

This section, section 22, has already had two amendments approved. Shall section 22, as amended, carry?

Ayes

Churley, Fonseca, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: Section 22 carries, as amended.

I believe that takes us all the way down to, shall the title—

Ms. Churley: You stood one down.

The Chair: There's another one? Sorry. Which one would that be? Oh, yes: page 31.

Ms. Churley: Yes, 31. I thank the legal counsel for helping draft a new replacement motion over the lunch hour. I hope you had time for your lunch. Thank you very much.

Everybody's got a copy of this replacement, I take it? No? Do you want me to proceed and read it out now, while people are waiting for a copy? What page did you say the original was?

The Chair: Page 31.

Ms. Churley: Do people want this distributed now, or shall I just read what I've got?

Interjection.

Ms. Churley: Let me read it to you. I'll read it first, into the record.

I move that section 14 of the bill be amended by adding the following section to the Child and Family Services Act after section 162.3:

"Duty to maintain records

"162.3.1(1) Every designated custodian, society, licensee and other person who participates in arranging adoptions or who creates records relating to adoptions shall maintain their adoption-related records for the period that is the longer of,

"(a) the applicable period required under the Archives Act for the documents described in section 3 of that act; or

"(b) at least 100 years after the placement of the adopted person.

"Exception

"(2) Subsection (1) does not apply with respect to those persons to whom the Archives Act applies."

You have in front of you the previous amendment, and there was some concern expressed around who this would actually end up applying to. I believe that this deals with that concern. If you have any other questions about it, perhaps legal counsel can help as well.

The Clerk Pro Tem: Just to clarify, you've withdrawn the first amendment and you're replacing it with this one.

Ms. Churley: Yes, I've withdrawn the first amendment and I am replacing it with this amendment.

The Chair: Are there any questions? Mr. Sterling may have a comment.

Mr. Sterling: We're placing an obligation on certain people to keep a record for 100 years. How do you do this? I'm interested in just working out how this is actually going to be implemented. My view is that any kind of registry of this type, where information should be in a repository held by the government in some form or fashion—when we say a "licensee and other person who participates in arranging adoptions," I'm thinking of my old legal profession. I'd love to live to be 135 years or whatever number it takes, but how is that implemented? Who is the retiring lawyer going to transfer that information to? I'm not in any way against the concept, but I'm just trying to figure it out. You're throwing this obligation out, and I don't know what is going to transpire as a result of throwing that obligation out.

Ms. Churley: First of all, let me say that it's absolutely critical that we find a way to keep those records. I think we'd all agree with that for, if nothing else, health reasons, but also for a number of reasons.

Mr. Sterling asks a good question. I would ask the government to find a way to make it work, and if there are precedents in other areas of record-keeping that you're aware of that are not conducted by a ministry of the government or any agency of the government, where records have to be kept for a period of time, and if that's regulated in some way to see that it happens.

Ms. Yack: Currently, under the CFSA, a licensee must keep records permanently, and if the licensee goes

out of business, must turn the records over to the ministry.

Ms. Churley: So you could see that a mechanism can be put in place to ensure that records are kept.

Ms. Yack: Yes. That section would still exist, so the licensees would still have to turn them over.

Mr. Sterling: Help me here. In terms of where there is a private adoption and there's full disclosure on both sides, what is the long-term interest in providing for the record to be kept? If both sides have full information and know who each other is, what is the goal of retaining that record forever or for 100 years? I'm trying to be practical in what we're doing here.

The Chair: Staff will answer, please.

Ms. Yack: It may be that they're confidential records, and the way of safekeeping them is to deliver them to the ministry.

1330

Mr. Sterling: I don't like creating a clause in the middle of legislation when you don't really understand what the ramifications of it are. That's my concern here.

Mr. Parsons: I can't support this amendment. At the present time, I can think of cases—Mr. Sterling mentioned lawyers. There are retired social workers or former social workers who operate private adoption services. They sometimes do it for three, four or five years and then they do another retirement. Under the current legislation, they're required to transfer their records to the ministry and the ministry is required to keep them in hard copy for 100 years. I think that's working. I think it would be unrealistic to expect the individual who has done a few private adoptions to retain the records for 100 years because many of them will leave the province. It's similar to a lawyer. What do they do with the records?

Mr. Ramal: And some have died.

Mr. Parsons: Yes, and some of them die, eventually. I like the transfer to the ministry and then preserved by the ministry as the more viable option. It's what is done currently.

Ms. Churley: The problem is that you're talking about one set of records, but you're not talking about the other set of records, the records that are now being kept and maintained by the ADR, and there is no provision within this legislation. That is going to be shut down. We hear about a custodian, but the custodian is not going to take on the responsibilities and the work of the ADR at this point. Searches are now going to be basically privatized. That's what is going to happen here for all adoptions. We still don't know for sure what's going to happen with the existing records. I know we're going to be working through that through the custodian, and that's essential.

This is a huge issue with the adoption community. They are extremely concerned. There are a couple of issues they want to work out through regulation, but this is one that they—I assume you've heard about this. They are extremely concerned about the keeping of records in such sensitive situations. We're talking about genetics, we're talking about health, we're talking about very, very

important information that could be needed down the road, with no provision. They have been saved now within the ADR. It's a problem. If we don't deal with it now—I don't know if it can be dealt with through regulations or what, but it has to be dealt with. With the dismantling of the existing ADR, it is a serious problem.

Ms. Wynne: Could I just ask a clarification of staff? I think the issue that Ms. Churley raises is a very relevant one. Records that are now retained by one body are going to be in the hands of other bodies or individuals. Is the new process such that those records are going to be required to be turned over to the ministry? In the case of the individual practitioner, as Mr. Parsons said, is there the assumption that those are going to be turned over? The principle is, are the records going to be retained somewhere for the long term? Can somebody help? The reason I'm predisposed to look for language that would enshrine the preservation of the records is that I think the principle is correct; that those records should be preserved. I need some help from staff here.

Ms. MacDonald: I think perhaps we may not have been sufficiently clear earlier when we were speaking about records. It is the intent that the records of the current adoption disclosure unit would be transferred to the custodian. It is the intent that the custodian would be able to undertake a search, would be able to use the non-identifying information transferred to them from the adoption disclosure unit. And it is the intent, for technical and security reasons, that the custodian is going to be comprised of Ontario public servants, whether that's an agency or part of a ministry.

Ms. Wynne: If I can be clear, those are records that exist now that are going to be transferred. What about the future state? When new records are created, what is the provision for those to be preserved for the long term?

Ms. Krakower: The intent is that the custodian would be the keeper of those records as well, and would be subject to the same provisions as a ministry in terms of a retention schedule for those records.

Ms. Wynne: So a licensee, or the estate of a licensee, would be required to turn over those adoption records to the custodian? Is that going to be laid out in regulation?

Ms. Krakower: The intent is that it would be required to turn those over to the custodian.

Ms. Wynne: OK. Could I just ask what the problem would be with saying that in the legislation, as opposed to in regulation? I'm not a lawyer, so I have to ask this question.

Ms. Krakower: I'm just looking to my lawyer as well.

Ms. Yack: We've provided, in subsection 162.2, information that will be disclosed to the custodian. What that information is will be prescribed by regulation, but the authority is there in 162.2.

Ms. Wynne: The authority is there to require that a licensee turn those records over to the custodian?

Ms. Yack: To provide information to the custodian that the custodian could then use to disclose to adopted persons and birth parents.

Ms. Wynne: So you folks feel confident that that will be covered off and that any records that are retrievable will be retrieved and preserved in the custodian's hands.

Ms. Krakower: Yes, we feel confident.

Ms. Wynne: Thank you.

The Chair: Any further debate? Ms. Churley and then Mr. Sterling.

Ms. Churley: This is a part of the bill—there are a couple of parts—that is making me very nervous. I've got to tell you that when I hear the word "intent"—it's good that the intent is there. But what you're basically saying, as we move along, is that this custodian—now I'm getting the impression that the custodian is going to be staffed up and they're going to be doing essentially most of the same things, without the counselling, that the present infrastructure, the disclosure unit, is already doing.

If that's the case—we have an infrastructure—why are we dismantling an infrastructure that has all the elements of everything we're talking about? I'm not asking you because it was a government decision to dismantle a unit that already has the infrastructure in place, unless, of course, the thought at first was, "Let's dismantle it and privatize all of it," because that was the initial concern; the custodian idea got brought into it because that was the huge concern in the community. It's not really clearly defined how much power that custodian is going to have, but I'm starting to hear more and more that the intent is basically to rebuild the infrastructure we're tearing down, which I would like to see stay in place.

Let's just put on the record that we don't know yet. We're going to have to fight hard to make sure that basically that custodian will really replace an infrastructure we already have. That's what I'm being told here. If that happens, I'm fine with that; there's just no guarantee of it. I think you're telling me that the intent now is to basically tear down the existing office and rebuild it under a new name, "custodian," but with an infrastructure and a staff to basically do much of the work that's being done now.

Ms. Krakower: There are some additional functions, some different functions for the custodian, that aren't under the current system. That has to do with the involvement of the custodian in terms of the prohibition in cases of abused crown wards: The custodian will now have a function in terms of information-sharing back and forth with the Registrar General and the CASs around that.

Ms. Churley: Yes.

Ms. Krakower: That's a brand new function.

Ms. Churley: That could just as easily be added to the existing office, however. I can see that this is going to be voted down. I can tell you very clearly that we're going to have to pay very close attention to what this new custodian, who is taking on a lot of those functions, is going to be doing. For obvious reasons, people are very, very concerned and worried about the implications of the dismantling of this office without a clear picture of who is going to be taking over, in what capacity, how many of the existing things we're talking about are going to be

included in that and how much is going to be privatized and dealt with outside the system. Therein lie the concerns around what happens to new records and the older records.

1340

Mr. Sterling: As I understand your answer, 162.2(1) is the clause that's going to have people register or give the records to the custodian. You're going to prescribe who those people will be, so it may or may not include the lawyer who arranges a private adoption, or it may or may not include the example that Mr. Parsons raised. Is that correct? I don't know whether Mr. Parsons's example is a licensee or just a private person bringing two parties together.

Ms. Krakower: I think that would be considered a private adoption, and that information would be provided to the custodian.

Mr. Sterling: Only if they're prescribed. There's nothing in here that talks about lawyers.

Ms. Yack: Currently, only a children's aid society or a licensee can place a child for adoption, and children's aid societies and licensees are mentioned in that section.

Mr. Sterling: So a lawyer has to go through either a licensee or the children's aid?

Ms. Yack: That's right.

Mr. Sterling: OK. So everybody is in.

Ms. Yack: It specifically names children's aid societies and licensees, and those are the two bodies that can place a child for adoption.

The Chair: Further debate? If there is none, I'll put the question. Shall the amendment carry?

Ayes

Churley.

Nays

Fonseca, Leal, Parsons, Ramal, Wynne.

The Chair: The amendment does not carry.
Shall section 14, as amended, carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Churley, Sterling.

The Chair: That carries.
Shall the title of the bill carry?

Ayes

Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: The title of the bill carries.
Shall Bill 183, as amended, carry?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries.

Shall I report the bill, as amended, to the House?

Ayes

Churley, Fonseca, Leal, Parsons, Ramal, Wynne.

Nays

Arnott, Sterling.

The Chair: It carries. Thank you.

Ms. Wynne: Mr. Chair, there's one other item that needs to be dealt with. At the beginning of these proceedings there was a document that was released in error. It was pulled back by the Chair. It was private information of the government. That document, I believe, still has to be dealt with in terms of what is to happen to it. I'd like to suggest that that document be held in confidence as part of the record of the committee for 50 years.

Ms. Churley: A hundred years.

Ms. Wynne: A hundred years? I'm saying 50.

The Chair: Is that a motion?

Ms. Wynne: Yes. I'd like to move that that document be held in confidence for a period of at least 50 years.

The Chair: Thank you for the motion. Now we open it for discussion. Mr. Sterling.

Mr. Sterling: As a former Attorney General, I understand this better than most or as well as most and as well as others. However, the one question I have is, who requested the document in the committee? Was it Mr. Jackson who requested it?

The Chair: Does staff know the answer?

Interjection: What's the question?

The Chair: Who requested the documentation in question.

Ms. MacDonald: We're not aware of anyone having requested the document.

Ms. Wynne: It wasn't.

The Chair: So it was brought by staff? I'm satisfied. Do you still have a question?

The Clerk Pro Tem: The information I have is that at its public hearing on May 18, the committee asked whether the Ministry of Community and Social Services had received any legal opinions on the constitutionality of the bill. The researcher then got—this is from Andrew McNaught, our committee researcher. He enclosed for the committee a copy of a legal opinion dated December 10, 2004, from the Attorney General's office. So that was provided to him and he provided it to the committee.

The Chair: So there was not a request; it was only given.

The Clerk Pro Tem: The committee asked whether they had received any legal opinions, and when that was

followed up by the researcher, it was provided to the researcher and provided back to the committee.

The Chair: OK. Any further debate?

Mr. Sterling: It's a bit of a problem when a document becomes public and then you try to make it private again.

The Chair: The motion is clear.

Mr. Sterling: The document's been out there and around. I think it was mentioned in the Legislature—

Ms. Churley: Some of us even read it.

Mr. Sterling: —a couple of times. I'm not sure by trying to deep-six it, you're doing—I mean, this was only proposed to me about 15 or 20 minutes ago.

The Chair: I hear you.

Mr. Sterling: So I would really like to have more time to think about it.

Ms. Wynne: Mr. Sterling, that's the precise reason that I'm moving the motion in the way that I am, that the document be preserved. If it's something that has to be revisited at some point, the document still exists and that can happen. But for now, I'm suggesting that a decision be made to maintain it in confidence, and if there's something that happens at a later date, then that's the case.

The Chair: Thank you. Any further debate? If there is none, then I'll take a recorded vote on that motion.

Mr. Sterling: What is the motion? Sorry.

Ms. Wynne: The motion I'm moving—well, actually you've written it down.

The Chair: Staff should read it since they've got it down.

The Clerk Pro Tem: That the legal opinion be held in confidence for up to 50 years.

The Chair: You may want to make reference to the date so that there's no confusion. OK? So that's the motion.

Ms. Wynne: Actually, I said at least 50 years.

The Clerk Pro Tem: At least; sorry.

Mr. Sterling: OK, fine.

The Chair: That is the motion. Are we ready for the vote?

Ms. Churley: No, a question on that.

Mr. Sterling: I don't know what this means. We know that in front of this committee somebody came forward and said they were going to have a constitutional challenge. I don't know what it means when we now try to deep-six the constitutional opinion of the Attorney General. I can't support this motion right now, but I'm quite willing to hold it in confidence until the next time we meet, when we have an opportunity to review the repercussions of what we're doing.

The Chair: Thank you for your comments. Any further debate?

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Ms. Churley: Yes, I wanted to ask for the implications if there's a vote on this and it passes. If that document, since it has been out there and anybody has a copy of that document and it is then used—I mean, that could happen, and if this committee decides to hold it for up to 50 years, there's no legal recourse, I assume, since it was accidentally released to this committee and was fairly out there for a while. So I'm assuming that if it's

out there, it's out there. Personally, I have no problem. I understand what happened here, but I'm just saying, and the question is, if it's used, it's used. Is that not correct?

The Chair: Thank you for your comments. Do you have an answer?

The Clerk Pro Tem: Just to clarify, or perhaps to muddy it, the practice of committees branch with any document that's distributed, when we do our exhibit list, when we finish this bill—which is now—we will continue distributing that document, because all we have in front of us is a letter from the Attorney General telling us not to.

Ms. Churley: Oh, I see.

The Clerk Pro Tem: We will continue distributing it unless the committee orders us otherwise. I think what is trying to happen here is to have it ordered otherwise, whether we put it away and lock it or—

Ms. Churley: Why don't we have a different motion then that would, as Mr. Sterling said, prohibit you from distributing that document in the meantime?

The Chair: What was the motion? Did you hear it?

Ms. Wynne: Ms. Churley, you're suggesting there would be a motion to hold the document in confidence for a period of time and have another discussion about it; is that what you're suggesting?

Ms. Churley: I think so, yes, so that we're clear it's not distributed—

Ms. Wynne: OK. What period of time are you suggesting?

Mr. Parsons: Fifty years.

Ms. Churley: A hundred years.

The Chair: Can staff give us an indication—

Mr. Sterling: I would imagine a shorter period. Why don't you do it when the House comes back? Have the committee meet and talk about it at that point in time.

Ms. Wynne: To be discussed at the next committee meeting?

Mr. Sterling: Yes.

Ms. Churley: OK, I will add that to the—

The Chair: So to be discussed at the next meeting. In the meantime it's not to be released.

Ms. Wynne: Right.

The Chair: Whenever the next committee meeting is, then it will be on the agenda.

Ms. Wynne: The decision of the committee was not to release the document up until this point. So we'll continue that and we'll discuss it at the next meeting.

The Chair: So that's the motion. Any further debate?

Ms. Churley: Have you got that motion?

The Chair: If there is no further debate, I'll take another vote. Those in favour of the motion? To be held until—

Ms. Churley: Until the next committee meeting.

The Chair: OK, it carries. Everybody supports it.

I want to say thank you to all of you for your contribution, and to those who are not present. A couple just left. Some of you have been with us from day one. I thank all of you, and staff in particular, for your time. Enjoy the balance of the day.

The committee adjourned at 1355.

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Ms. Lynn MacDonald, assistant deputy minister, social policy development

Mr. Hari Viswanathan, policy analyst

Ms. Susan Yack, legal counsel,

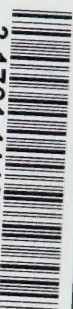
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